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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 375

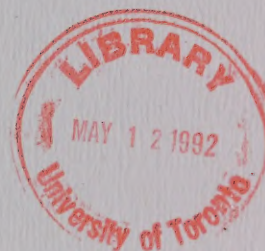
DATE: Thursday, April 30, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249



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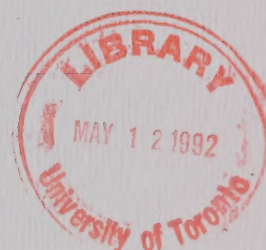
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.


Hearing held at the offices of the Ontario
Highway Transport Board, 10th Floor, 151 Bloor
Street West, Toronto, Ontario, on Thursday,
April 30, 1992, commencing at 9:00 a.m.

VOLUME 375

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>BERNIE NEARY,</u> <u>HERB BAX,</u> <u>DARLENE DAHL; Resumed.</u>	65188
Cross-Examination by Mr. Freidin	65188

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Please be seated.

3 Good morning, Mr. Freidin.

4 MR. FREIDIN: Good morning.

5 BERNIE NEARY,
6 HERB BAX,
7 DARLENE DAHL; Resumed.

8 MS. SEABORN: Madam Chair, just before we
9 begin. I didn't want to interrupt Mr. Cassidy
10 yesterday during his cross-examination. He made
11 reference to evidence in reply that he may call. I
12 just wanted the Board to be aware that I speak with Mr.
13 Cassidy when our evidence is over about the nature of
14 that reply evidence.

15 As the Board is aware, there was a ruling
16 early on in the hearing that spoke about the limited
17 right of reply for the Industry and limited not so much
18 in a sense of time, but limited in the sense of the
19 issues that they would be entitled to address in reply.

20 So I will be corresponding with Mr.
21 Cassidy and finding out the nature of that evidence in
22 the event we have any objections.

23 Thank you.

24 MR. NEARY: Madam Chair?

25 MADAM CHAIR: Yes, Mr. Neary.

1 MR. NEARY: I would like to make a point
2 of clarification arising from the discussion that I was
3 having with Mr. Cassidy yesterday about the
4 applicability of our term and condition 21(c) which is
5 the restriction of full tree logging and full tree
6 chipping methods.

7 If you could turn to our written
8 evidence, Exhibit 2200A, on page 2 we specify that our
9 definition of the term full tree logging, we use it in
10 the sense that it is defined in the class environmental
11 assessment document, and if I may I would like to read
12 the definition of full tree logging as it appears in
13 the class environmental assessment document. It is
14 found on page 38, and it says:

15 "The full tree logging system supplies
16 the full tree including limbs and tops to
17 the roadside for further processing into
18 tree lengths or shorter lengths. The
19 operations of felling and skidding are
20 performed between the stump location and
21 the roadside. Topping and limbing can
22 take place at the roadside and the wood
23 hauled as tree lengths or the wood may be
24 slashed to preferred lengths then hauled.
25 Occasionally, no topping, limbing or

1 slashing takes place. The wood is simply
2 hauled as full trees."

3 Now, there is no definition of full tree
4 chipping in the class environmental assessment
5 document, but I think Mr. Bax's oral evidence on the
6 description of full tree chipping makes it clear that
7 as far as the Ministry of the Environment is concerned
8 and the intent of this term and condition is intended,
9 it is a system where the limbs and tops and virtually
10 the full tree is removed to the roadside.

11 There are significant differences at that
12 point and because of that there are significant
13 differences in what may be removed from the site.

14 I just want the Board to be clear that
15 the intent of term and condition 21(c) is to apply
16 those logging systems, not logging systems which leave
17 slash and branches distributed on the site.

18 MADAM CHAIR: So as the Board understands
19 it from your evidence your main concern with full tree
20 logging is the removal of the slash material from the
21 site?

22 MR. NEARY: Yes, and that is intent of
23 that term and condition to apply to those logging
24 systems not to modifications or different types of
25 logging systems which would redistribute the slash or

1 do the delimbing in the bush at the stump.

2 MADAM CHAIR: All right. Thank you.

3 MR. FREIDIN: If I could take a moment,

4 Madam Chair, because I had a few questions that I

5 wanted to ask about that issue.

6 CROSS-EXAMINATION BY MR. FREIDIN:

7 Q. If I might just sort of going along
8 from what Mr. Neary said, Mr. Bax, I think I have you
9 accurately in my notes when in a discussion regarding
10 full tree chipping and full tree harvesting you said
11 that there is no difference in the method re cutting of
12 the tree or taking it to the roadside.

13 MR. BAX: A. Between the two?

14 Q. Yes.

15 A. Full tree chipping and full tree
16 harvesting?

17 Q. Yes. There is really no difference
18 regarding the cutting method or taking it to roadside.
19 You cut it the same and you take it to the roadside,
20 the full tree?

21 A. There can be differences between the
22 two systems as to how they bring the tree to the
23 roadside.

24 Q. Right, but in terms of the thing that
25 is giving rise to the concern regarding nutrients there

1 is no difference because in both cases whether you chip
2 it at roadside or whether you just slash it at roadside
3 you are taking the full tree to the roadside and,
4 therefore, removing the branches and the slash from the
5 site?

6 A. That is our concern, that's correct.

7 Q. Right. If we look at the document in
8 your references at Tab No. 1 where we have the minutes
9 of that meeting dealing with wood harvesting and
10 silvicultural systems, the CPPA workshop.

11 Before I sort of refer you to the
12 particular page there, I guess the real difference then
13 between full tree chipping -- what we refer to as full
14 tree chipping and full tree harvesting is really that
15 once you get it to the roadside the processing that
16 takes place is different?

17 A. Well, I believe I have referred to
18 that in my oral evidence as well. There are other
19 differences that we feel are important, especially
20 referring to the long-term productivity site and that's
21 the removal of smaller trees or the potential of that
22 with the full tree chipping system.

23 Q. All right. I will get to that.

24 Let's leave aside for the moment the trees which are --
25 there may be more trees taken, smaller trees taken.

1 Let's assume in terms of what happens --
2 the real difference other than that is that is a
3 processing difference at the roadside. It is not a
4 difference in the logging method, it is a difference in
5 how the trees are processed once you get them to the
6 roadside?

7 A. No, that's incorrect. I think our
8 evidence or my evidence indicated that one difference
9 is the chipping that occurs and the removal of the tops
10 and branches to the roadside.

11 Some of the other concerns that my client
12 is concerned about is the fact that they can go into
13 stands with poor stocking, for example, and it is now
14 economical to harvest those type of stands with full
15 tree chipping as opposed to full tree harvesting. That
16 is the significant difference.

17 Q. I'm trying to deal with it one
18 concern at a time. Let's deal with the difference as
19 to what occurs at the roadside. Not what's taken off,
20 not how much is taken off, but what is done at -- the
21 other difference is that there is a different
22 processing of the tree once it gets to the roadside?

23 A. That's correct.

24 Q. Now, that is a difference in
25 processing, it is not a difference in a logging method?

1 A. No, but our concern is also, for
2 example, in dealing with it --

3 Q. No, no, don't tell me what your
4 concerns are. I am asking this because in your witness
5 statement there is some suggestion that the proponent
6 has not described all of the alternative logging
7 methods.

8 A. Right.

9 Q. Now, Mr. Bax, a logging method is the
10 manner in which trees are harvested and are taken off
11 of the site to roadside; isn't that correct?

12 A. That's one part of the silvicultural
13 package, that's correct.

14 Q. That's the definition of that part of
15 the silvicultural package which is called logging
16 method; is that right?

17 A. That's correct.

18 Q. So you take the trees off the site
19 through the same logging method whether you process it
20 at roadside by slashing it or whether you process it at
21 the roadside by chipping; isn't that correct?

22 A. The same or similar methods are used
23 to bring the tree to the roadside, that's correct.

24 MR. NEARY: A. Mr. -- sorry.

25 Q. All right. Go ahead, Mr. Neary.

1 MR. NEARY: A. We thought that that was
2 not the major difference in how you definid logging
3 systems based on the fact that you distinguish as
4 distinct logging systems the shortwood logging system
5 which is a system where specific lengths are cut,
6 either 8 to 16 foot lengths, and tree length logging
7 system, the actual process in my understanding of
8 cutting down the trees and taking off the limbs and
9 that is identical.

10 The only difference there was the length
11 of the product being taken out of the forest and based
12 on that you have distinguished that as separate logging
13 systems in the class environmental assessment document.

14 Q. Okay. I understand what you have
15 said, but let's talk about the concern you have got,
16 nutrient removal from the site. I think we -- I will
17 just be repeating myself.

18 MR. BAX: Could I add one thing, Madam
19 Chair, just as an example because my work I do is
20 following the different logging methods that are used
21 and, for example, one significant difference that
22 occurs between full tree harvest and full tree chipping
23 is with full tree harvest we lose anywhere from 6 to 10
24 per cent of the area due to the slash piles.

25 When we come into a full tree chipping

1 site those are diminished down to about 1 or 2 per cent
2 of the productive forest land area.

3 In our work now it pays us -- for
4 example, we outfit our skidders with slash -- a device
5 slash -- pounding devices on blades, we reinforce the
6 radiators so that we go and pile the slash after full
7 tree harvesting at no cost to our client because it
8 pays us because we get that increase in the productive
9 area back and we get paid for site preparing that.

10 So I caution you. I think you have
11 defined it or the EA has defined it as logging, but
12 when we come in and look at it from a silvicultural
13 sense or the management sense there is tremendous
14 difference and that's just one example.

15 MR. FREIDIN: Q. Right. What you have
16 just described, whether we call it a logging method or
17 we don't, is an advantage from your perspective of
18 chipping at the roadside as opposed to slashing and
19 leaving slash piles?

20 MR. BAX: A. That's correct. The point
21 that I am trying to make is that is why it is so
22 important to distinguish that logging method. That's
23 why we have to know.

24 I have seen places --

25 Q. Hold on. So from your perspective,

1 you are saying from your perspective as someone who is
2 going to do site preparation it is helpful to know
3 whether the trees when they get to roadside are going
4 to be processed through chipping or whether it is going
5 to be processed just by slashing and leaving slash
6 piles?

7 A. Not only for site prep, for all the
8 subsequent, planting and seeding. There are tremendous
9 differences.

10 Q. So you say you would like to know
11 that because you get involved in doing some of these
12 subsequent things and it makes a difference to you?

13 A. Planting, seeding and site
14 preparation and that's the primary methods of renewal.

15 Q. In terms of the nutrients that get
16 removed from the site, let's leave aside the fact that
17 maybe more trees get taken when you are going to have a
18 chipping operation at the roadside, leaving that aside,
19 from a nutrient point of view there is no difference
20 whatsoever in terms of the potential slash which is
21 removed from the site where, on the one hand, you slash
22 it at the roadside and, on the other hand, you chip it
23 at the roadside.

24 MR. NEARY: A. No, but you missing the
25 entire point, is that because you have that chipping

1 you are taking smaller trees, you are taking more
2 trees.

3 Q. We will talk about that. That's just
4 what I said.

5 A. That's one of the points of
6 difference that we are trying to establish.

7 Q. Isn't that then the only difference
8 about chipping, the only implication about chipping
9 which gives rise to your concern regarding nutrients
10 and nutrient removal from the site when comparing it to
11 full tree logging?

12 A. Well, it goes a little bit further
13 than that.

14 Q. When you take the log and you just
15 slash it?

16 A. It goes a little bit further than
17 that because under this logging system different types
18 of areas, in our understanding of it, are considered
19 eligible for harvest.

20 So poor stock stands or stands that have
21 exclusively small diameter growth trees are considered
22 eligible for harvest because this logging system is
23 available. So it goes beyond what you're saying.

24 If there is a site that would be
25 considered under full tree logging and full tree

- 1 chipping, you are correct. Our main concern is that
2 there would be additional trees removed.

3 Q. Okay, thank you. Would you just turn
4 on Tab No. 1, Mr. Bax, to page No. 5. There is a
5 reporting of harvesting systems to roadside.

6 MR. BAX: A. Yes.

7 Q. If we look at the central one they
8 talk about -- they describe basically three: full
9 tree, tree length and cut to length?

10 A. That's correct.

11 Q. Is that right?

12 A. That's correct.

13 Q. And harvesting systems to roadside,
14 in other words there are three logging systems of
15 getting the wood to the roadside through full tree, by
16 tree length or what they refer to as cut to length?

17 A. As indicated in this chart, yes,

18 MR. NEARY: A. I would disagree with
19 that. It is entitled harvesting --

20 Q. You are disagreeing with Mr. Bax.
21 Tell me why you disagree with Mr. Bax?

22 A. Because it is entitled Harvesting
23 System to Roadside and there are clearly five
24 harvesting systems identified.

25 Q. Okay.

1 MR. BAX: A. They distinguish between
2 full tree harvesting and full tree chipping.

3 Q. Now, in terms of nutrient removal, it
4 is nutrient removal from the site which is giving rise
5 to your concern about full tree chipping; is that
6 correct.

7 MR. NEARY: A. From that nutrient
8 standpoint, yes.

9 Q. All right. You are taking more
10 nutrients from the site you believe because you are
11 cutting down perhaps now small diameter trees which
12 might otherwise not have been taken; is that correct?

13 A. Yes, and considering harvest
14 operations in sites which perhaps would not be
15 considered with other logging systems.

16 Q. Let's talk about a site where you go
17 on and you would maybe take some trees which are
18 smaller in diameter to the ones that you would normally
19 take, can you tell me how that, in fact, results in a
20 depletion of nutrients on the site?

21 A. Well, I think it's clear --

22 Q. Nutrients on the site, I am talking
23 obviously for the next crop.

24 A. It's clear from the studies tabled by
25 you and a number of the other parties in front of this

1 Board that in some sites there are significant stores
2 of nutrients in the boles, foliage, twigs of the
3 standing timber on a site.

4 If you go in with one logging system and
5 remove a certain portion of that, you go in with a
6 different logging system, in this case chipping, and
7 you remove that same portion plus an additional number
8 of trees that are considered economic to harvest
9 because of this difference, then you are removing more
10 nutrients from the site because you are removing more
11 biomass and the biomass contains nutrients.

12 Q. When and if it falls over and
13 decomposes it may have removed nutrients from the site;
14 is that correct?

15 As long as it is standing there there is
16 no difference in terms of the nutrients available for
17 the new -- for the next crop if the trees, the smaller
18 trees are left standing there. They don't add any
19 nutrients to the site. They are, in fact, taking
20 nutrients from the site?

21 A. I disagree. There is a certain
22 amount of cycling associated with litter fall, leaching
23 from the foliage, leaching from the bark in the case of
24 stem flow.

25 The fact that the nutrients are there on

1 the tree, I agree that the bulk of them are unavailable
2 to other trees growing, but...

3 Q. Okay. Now, let's go back to where I
4 wanted to start with, Mr. Neary.

5 You gave a short history of your
6 involvement or the ministry's involvement in this
7 particular class environmental assessment and you went
8 back some years and you made the comment that during
9 this time that you were talking about a lot of concerns
10 that we originally had have been addressed.

11 Now, when you made that comment you were
12 talking about concerns of the Ministry of the
13 Environment?

14 A. Yes.

15 Q. Is it fair to say that a lot of the
16 concerns that you originally had were addressed - those
17 were your words - as a result of extensive discussions
18 and meetings between the two ministries?

19 Notwithstanding there are a few
20 outstanding matters, there have been a lot of meetings
21 and discussions which, in fact, have resulted in a lot
22 of your original concerns having been addressed?

23 A. Yes.

24 Q. And in addition to having many
25 individual meetings with your ministry, some of those

1 resolutions were the result of sort of more open
2 negotiations and I am talking about the formal
3 negotiation sessions where it just wasn't the two
4 ministries sitting down, but everybody was sitting down
5 around the table?

6 A. Yes. I wasn't heavily involved in
7 those, but my understanding is yes.

8 Q. Thank you. Mr. Neary, in terms of
9 nutrient cycling, as I understand it, there is a
10 chemical reaction which takes place within the soil
11 that has an effect on the aquatic environment and it
12 could also have an effect on the terrestrial
13 environment, vegetation on the site; is that correct?

14 A. You'll have to rephrase that.

15 Q. All right. I am going back to the
16 discussion we had when we were asking about your
17 particular area of expertise.

18 A. Yes.

19 Q. I think you said you have studied
20 chemicals reaction within soil, nutrient cycling within
21 soil?

22 A. Yes.

23 Q. And that nutrient cycling that takes
24 place in the soil has an effect on the aquatic
25 environment, it also has an effect on the terrestrial

1 environment? I'm talking about the vegetation on the
2 site.

3 A. I'm not too sure I can agree with
4 you. I think you're essentially correct.

5 Q. All right. You have some nutrient
6 cycling going on, there are cause/effect pathways
7 between what goes on within the soil in terms of
8 nutrient cycling and how certain nutrients and
9 chemicals get into the aquatic ecosystem, whether it is
10 ground water or overland flow and how it gets into
11 receiving waterbodies.

12 That's one thing that happens in terms of
13 one cause/effect linkage between the nutrient cycling
14 and a part of the environment; from the soil into the
15 water to receiving waterbodies, right?

16 A. Yes.

17 Q. Another thing that happens is you
18 have the very same reactions also interact with
19 vegetation on the site so nutrients are taken up, trees
20 grow at different rates depending on how much they get
21 and they develop differently depending on how much they
22 get and when they get these nutrients; is that correct?

23 A. There are other factors associated
24 with how well the trees are growing, but nutrients are
25 certainly important.

1 Q. And scientists who are involved and
2 knowledgeable about what goes on in the soil, have I
3 not described basically two different areas of
4 scientific study or endeavor that some people are
5 experts and work in the linkages between the nutrient
6 cycling and the aquatic environment and others deal
7 with the connection between the nutrient cycling and
8 the trees and the vegetation on the site, the ability
9 of those nutrients to grow on site and whether there
10 are enough of them?

11 A. Are there individual experts in each
12 of those fields? The answer is yes. There are also
13 people that look at watershed systems including the
14 terrestrial and the aquatic system as a whole.

15 Q. Okay. Do you regard yourself as
16 equally expert in the connection between the nutrient
17 cycling and the aquatic environment as we have
18 discussed and that same nutrient cycling and it's
19 significance for the growth of vegetation and in
20 particular tree species?

21 A. My area of research is directed to
22 the aquatic side, but I feel that I have a good
23 understanding of the other part of the nutrient cycle
24 as well.

25 Q. Okay. So I take it from what you are

1 saying is you believe that you are an expert in the
2 aquatic part, but that you have an understanding of the
3 other cause/effect linkage?

4 A. I'm not sure too sure if you're
5 trying to push me into some legal definition of expert
6 or not. I feel that I have very varying levels of
7 expertise about a lot of things, and I'm not too sure
8 where I drop off some legal cliff as far as expertise
9 goes.

10 MS. SEABORN: I will try and let you know
11 if you drop off any cliffs, Mr. Neary.

12 MR. FREIDIN: Q. It may become a matter
13 of argument, but I don't think you should concern
14 yourself about whether you are falling off the clip or
15 not. I would like you to try and answer my questions.

16 I take it from what you are saying is
17 that you have an understanding of the linkage between
18 that chemical reaction and the vegetation on the site
19 and the significance of the changes, but that you
20 regard yourself as much more of an expert, if I can put
21 it that way, in terms of the connection between that
22 chemical reaction and the aquatic environment?

23 MR. NEARY: A. My area of active
24 research focuses on the aquatic side.

25 Q. And would you not agree, therefore,

1 that you are more expert in relation to the connection
2 between the nutrient cycling and the aquatic
3 environment than you are in relation to the other area
4 where you have a general understanding and you have
5 done no research?

6 A. What I disagree with is your
7 characterization of the processes going on in a
8 watershed as two distinct cycles because they are
9 integrally related.

10 Now, my active area of research looks at
11 lakes, I am a limnologist, but your characterization of
12 watershed processes into little boxes I think is
13 incorrect.

14 Q. All right. I didn't think I was
15 talking about watershed process.

16 A. Well, you referred to it as one cycle
17 involving trees and another cycle involving water.

18 Q. No, it is the same cycle, but has
19 different cause/effect relationships.

20 Let me take what I think is going to be
21 referred to as the Martel approach.

22 MADAM CHAIR: Are you going to give a
23 speech, Mr. Freidin?

24 MR. FREIDIN: I have to move down my
25 glasses to start with.

1 Q. Professor Armson, Dr. Methven gave
2 evidence regarding nutrient cycling and the
3 significance of that nutrient cycling for tree growth.

4 They gave their opinion regarding the
5 significance of the removal of certain nutrients from
6 the site through logging methods on tree growth and
7 whether it was significant.

8 MR. NEARY: A. Yes.

9 Q. I'm suggesting through my
10 questioning, sir, that if there was a disagreement
11 between the significance of nutrient cycling and tree
12 growth, a difference of opinion as between you and, on
13 the other hand, either Dr. Methven or Professor Armson
14 that because of their credentials, because of their
15 expertise, because of the kinds of research that they
16 have been involved in that they would have to be
17 regarded as being more expert in that relationship
18 between the chemical reaction, the nutrient cycling and
19 tree growth than you, whereas, on the other hand, you
20 would be regarded as more of an expert in relation to
21 the cause/effect linkage between the nutrient cycling
22 and the aquatic environment.

23 Now, do you agree with that?

24 A. I don't think that you are
25 understanding my evidence on this matter.

1 Q. I don't want to understand. I am
2 asking you --

3 MS. SEABORN: You have asked a question,
4 Mr. Freidin. Let him answer.

5 MR. FREIDIN: I think he is changing it
6 to his evidence and --

7 MS. SEABORN: He is here to give
8 evidence, Mr. Freidin.

9 MADAM CHAIR: Let's hear Mr. Neary's
10 response to your last question, Mr. Freidin.

11 MR. FREIDIN: Okay.

12 MR. NEARY: My evidence on the matter is
13 not to agree or disagree with Dr. Hutchinson, Dr.
14 Maliondo, Mr. Armson or Dr. Methven.

15 My evidence on the matter is that there
16 is a lack of scientific consensus because I understand
17 the content of all of the scientific studies that are
18 relied on. My understanding of the processes involved
19 is sufficient for that. I see equally learned and
20 distinguished people coming to different conclusions.

21 My evidence is that we are faced with an
22 issue where there is uncertainty and a lack of
23 scientific consensus.

24 I don't think that I'm -- my only
25 difference with Dr. Methven and Mr. Armson is that we

1 should be cautious about the implications of the
2 conclusions of these studies.

3 MR. FREIDIN: Q. Do you not agree that
4 whether or not one is giving an opinion as to whether
5 one should cautious or not and what that means should
6 be given greater weight if the person you are listening
7 to is someone who is an expert in the cause/effect
8 linkage that you are concerned about as opposed to,
9 say, a layman?

10 A. I would hardly characterize myself as
11 a layman.

12 Q. I'm not characterizing you as a
13 layman. Hypothetically Mr. Armson's opinions would
14 have to be given more weight in that discussion because
15 he is an expert in that area as opposed to the layman.

16 Hypothetically, would you agree with
17 that?

18 A. I think that's something that the
19 Board will have to decide.

20 Q. Well, I am just asking the question.
21 Can you answer the question, please.

22 A. Does he have more expertise as a
23 podologist than I do, yes.

24 Q. A what?

25 A. Podologist.

1 Q. What's that?

2 A. That is what Mr. Armson was qualified
3 as.

4 Q. What is it?

5 A. It is a soils scientist.

6 Q. All right. So if the Board was
7 having to consider and weigh the evidence of Professor
8 Armson and, in a hypothetical situation, a layman on
9 whether they should be concerned or what the degree of
10 concern should be or whether one should be cautious and
11 what that meant from a practical point of view that
12 Professor Armson's evidence would certainly have to be
13 given more weight than the layman's?

14 A. In that hypothetical example, yes.

15 Q. I am saying if we have a continuum,
16 if Professor Armson is over here on the right and the
17 layman is over here on the left, my left, that you in
18 relation to that understanding of those cause/effect
19 linkages between nutrient cycling and site productivity
20 and what it means when you remove nutrients from the
21 site from a scientific point of view, whether it is too
22 much or not enough, that you may perhaps aren't over
23 here with the layman, but you aren't as far as over to
24 the right as Professor Armson or Dr. Methven. Would
25 you agree about that?

1 A. I would hesitate to go head to head
2 and rank myself on that continuum at all, Mr. Freidin.

3 Q. Are you saying that you are -- why
4 would you hesitate doing that? It is because you feel
5 you have the same expertise as Professor Armson and Dr.
6 Methven or that you are not even on the same scale?
7 I don't understand.

8 A. Because I don't know the criteria by
9 which you are setting up your scale.

10 Q. An understanding of soil science,
11 nutrient cycling that takes place within that soil and
12 the cause/effect linkages between that and tree growth
13 and understanding the significance of the removal of
14 nutrients from the site on that tree growth.

15 I just say they are experts in that.
16 That's what they do. That's what they have spent years
17 working in, and you have an understanding of that
18 because you have read literature and are familiar with
19 nutrient cycling, but particularly as it affects the
20 aquatic environment?

21 A. And I relied on their expert opinion
22 in formulating our position.

23 Q. In relying on their expert opinion,
24 are you referring to the evidence of Mr. Armson where
25 he said there should be certain -- that he would

1 exercise caution. Is that what you are referring to?

2 A. No. Our position, and I will state
3 it again, is that there is a lack of consensus on this
4 issue and that there are expert opinions on both sides
5 of this issue.

6 Our position is that the consequences of
7 going with the expert opinion offered by Mr. Armson and
8 Dr. Methven are potentially serious if they are wrong.

9 Q. Okay. Let's get to the second page
10 of my notes. Could you turn to page 20, please.

11 A. Of...?

12 Q. Of your witness statement. This is
13 at Tab 1. Now, that's where you have term and
14 condition 32(b).

15 32 was the subject of agreement, 32(a)
16 was the subject matter of an agreement between the
17 ministry -- the two ministers, I believe, and it was
18 filed as a separate exhibit; is that correct?

19 A. I don't have that exhibit in front of
20 me.

21 MS. SEABORN: Exhibit 2214. (handed)

22 MR. NEARY: Thank you, Madam counsel.

23 MR. FREIDIN: Q. What we have here on
24 page 20 and what you describe in the middle of the page
25 as 32(b) I take it is now what you would suggest would

1 become 32(c)?

2 MS. SEABORN: I'm sorry, Mr. Freidin,
3 could you just repeat that again? Page 20 of Mr.
4 Neary's evidence? We can number it that way.

5 MR. FREIDIN: Okay.

6 Q. So what we have on page 20 in terms
7 of your recommendations for 32(b), it is something
8 which is completely new, it's all new?

9 It is the Ministry of the Environment's
10 position and no part of that is the Ministry of Natural
11 Resources' term and condition; is that correct?

12 MR. NEARY: A. That is correct.

13 Q. Okay. Now, I looked at that and you
14 defined a number of criteria you say you would want to
15 use to decide where you should use the area of concern
16 planning process. I went down three lines from the
17 bottom of page 20, and you indicate:

18 "If operations being proposed in
19 protection forest or production forest
20 reserve and the site classification is
21 warranted due to growth limitations
22 inherent in the site..." certain things
23 you set out above should occur.

24 Now, do I understand correctly that the
25 concern that you are trying to address through this

1 recommended term and condition is one which arises
2 because of a concern about growth limitations inherent
3 on those kind of sites?

4 A. In that the definition of these --
5 well, protection forest is site class 4 in the forest
6 resources inventory and the forest resource -- these
7 site classifications are an index of the productivity
8 of the site.

9 Q. All right. But this term and
10 condition is developed to address the concern regarding
11 operations on sites where you believe there may be
12 growth limitations inherent in the site?

13 A. Yes.

14 Q. That's what it says at the bottom
15 there.

16 A. Yes.

17 Q. All right. I want to know what the
18 concern is that this is trying to address.

19 A. Yes.

20 Q. Could you turn to page 22. You state
21 in the first full paragraph, go up about four lines,
22 you talk about the same term and condition, you say:

23 "However, in areas where it is likely
24 that site damage will occur or a
25 reasonable concern exists and in areas

1 where it is likely that regeneration will
2 be less than adequate an enhanced
3 planning process is required until the
4 use of standardized site types is adopted
5 for purposes of defining appropriate
6 silvicultural packages."

7 Now, again, the site damage that you are
8 referring to is what?

9 A. Well, it may be a nutrient limit as
10 expressed, but it may be the the other characteristics
11 that we are trying to associate with a "sensitive
12 site".

13 Q. When you are talking about growth
14 limitations--

15 A. Yes.

16 Q. --when you are talking about
17 nutrients and --

18 A. There are other things that can limit
19 growth.

20 Q. Well, can you describe for me what
21 the site damage is that you are concerned about that
22 you refer to on page 22?

23 A. I can probably illustrate it with an
24 example that Mr. Armson gave when there was a long
25 discussion early in the hearing about fragile sites and

1 he brought up an example of an area called Partridge
2 Lake and there was a white pine stand, it was a fragile
3 site -- or I believe his words were 'other people
4 called it a fragile site. I don't think Mr. Armson
5 ever used the term.

6 Q. He was trying to demonstrate that it
7 wasn't a fragile site for the purposes of growing trees
8 I think.

9 A. What he said was that by considering
10 the site characteristics carefully, modifying normal
11 operations in that area that they were able to
12 successfully perform some logging in there and provide
13 some site protection.

14 Now, he didnt' use the term, but that's
15 the approach that we would like to see on these fragile
16 and sensitive sites.

17 The Ministry of Natural Resources --

18 Q. On what you call fragile and
19 sensitive by your definition?

20 A. Yes, what can he call fragile and
21 sensitive sites.

22 The Ministry of Natural Resources is
23 relying on silvicultural grounds rules for
24 environmental protection in normal operating areas and
25 we believe that when you encounter what we call fragile

1 or sensitive sites that the area of concern planning
2 process which, first of all, recognizes the value
3 intrinsic in the site that you are trying to protect,
4 considers explicitly the consequences of your operation
5 and then comes up with a modification of procedures
6 that will allow that value to be protected is
7 appropriate for those types of sites.

8 Q. Okay. What I just want to go through
9 here -- if you will give me a moment here.

10 Let's go back to page 28. I take it from
11 what you are saying that you are relying to some extent
12 on evidence given by MNR witnesses to support your term
13 and condition 32(b)? That's why you --

14 A. The Partridge Lake example happened
15 in the 1950s and none of the terminology I am using in
16 terms of area of concern planning process de facto what
17 happened there was that type of process. It wasn't
18 couched in the terminology of environmental planning as
19 it applies to this undertaking.

20 Q. Fair enough.

21 A. But that's really what happened
22 there.

23 Q. Fair enough. You refer on page 21 to
24 some specific evidence and testimony, for instance, of
25 Dave Gordon.

1 A. Yes.

2 Q. And of Ken Armson and I take it you
3 cited that because you believe it supports your
4 proposed term and condition 32(b); is that right?

5 A. It led us to include those types of
6 areas in our definition of sensitive.

7 Q. All right. In the executive summary,
8 Mr. Neary, the very page first page of your witness
9 statement, you say in the third full paragraph:

10 "In the case of the first two issues..."
11 which include this No. 1, the nutrient depletion matter
12 that we are talking about now. You say:

13 "...there is uncertainty as to the scope
14 and seriousness of environmental harm.

15 There has been conflicting evidence..."
16 and somewhere in here, and I thought that's where it
17 was -- it is in the introduction on page 8, you say in
18 relation to the summaries of people's evidence, you say
19 in paragraph 3 that:

20 "These summaries are not intended to be
21 complete nor are they to be construed as
22 a full description of the parties'
23 positions. They summarize the elements
24 of each of the parties' evidence that
25 MOE considers pertinent to the MOE

1 position on the matter."

2 Now, does that mean that you have cited
3 those portions of those witness' evidence which you
4 believe supports your position and have not referred to
5 those portions of their evidence which does not?

6 A. No.

7 Q. All right. So you haven't
8 selectively chosen evidence and just said this supports
9 our position and we will tell the Board about that, but
10 we won't select the evidence which is detrimental to
11 our view? You didn't do that is what you are telling
12 me?

13 A. No.

14 Q. No?

15 A. For example, in our first issue we
16 tried to bring out the evidence on both sides of the
17 issue. I'm not saying that we have completely
18 represented -- it states quite clearly here "they are
19 not intended to be a complete description of the other
20 parties' positions."

21 Q. Did you take pains to make sure that
22 you didn't quote them out of context when you referred
23 to their evidence in the witness statement?

24 A. I tried to be fair.

25 Q. Right. Let's just see whether in

1 fact through inadvertance you did take some of these
2 witnesses out of context, particularly the passages
3 that you rely on on page 21 in support of your term and
4 condition.

5 I think what we are going to need is
6 Volume No. 37 to start with.

7 MS. SEABORN: Mr. Freidin, are you
8 referring to a specific footnote of Mr. Neary's?

9 MR. FREIDIN: Yes. I am going to deal
10 with footnote 88 and 89, the evidence of Dave Gordon.

11 What I am doing to do is I just want to
12 have the witness -- what I want to do is review the
13 pages which are cited and then take the witness to some
14 other pages and just see whether -- for the full story
15 to be before the Board.

16 I am not suggesting this was in any way
17 planned, Mr. Neary. There are lots of transcripts
18 here. I just want to make sure that we are being fair
19 to Mr. Gordon or Mr. Armson or whomever you are citing.

20 Q. Footnote 88 and 89 are referred to in
21 the text under the heading Untreatable and it's right
22 in the middle you go through and you talk about -- you
23 had a discussion with Mr. Gordon about NSR 4 and 5 and
24 then you say about ten lines down, in about the middle,
25 it says:

1 "MNR agreed that sites with these
2 characteristics...."

3 Do you see that?

4 MR. NEARY: A. (nodding affirmatively)

5 Q. "...could be predicted with some
6 degree of confidence to end up in NSR 4
7 or 5 with the qualification that
8 practicality for treatment changes with
9 advances in technology. MNR also agrees
10 that site characteristics can be
11 identified in advance of operations and
12 there was reasonable confidence that they
13 would end in NSR 4 or 5 categories."

14 Now, I take it that you cited that
15 particular passage because you were relying on that to
16 suggest to the Board that MNR had indicated that this
17 was something that they could do and, therefore, you
18 were just asking that the Ministry do what Mr. Gordon
19 said was possible?

20 A. No, that wasn't my intent.

21 Q. What was your intent?

22 A. My intent was that we are expressing
23 concerns that are untreatable, that may not be
24 satisfactorily regenerated, and I was aware that Mr.
25 Campbell had had a long discussion with Mr. Gordon on

1 the definition of non-treatable area which is referred
2 to in quotes there from the Timber Management Planning
3 Manual.

4 Q. Okay.

5 A. He took Mr. Gordon through each of
6 the elements of that description, the topography,
7 shallowness of soil, excessive rock, and asked whether
8 or not these site characteristics can be identified.

9 Mr. --

10 Q. And --

11 Q. Sorry, go ahead.

12 A. Yes. Mr. Gordon agreed that most of
13 those site characteristics -- now this is my
14 recollection of reading the transcript and I will try
15 and do it as accurately as I can, agreed that you could
16 tell if a site had extremes in topography, could tell if
17 it was shallow, had excessive rock.

18 I believe he agreed with Mr. Campbell's
19 proposition that you could with a reasonable degree of
20 confidence predict in advance when operations on these
21 areas would end up with a site ending up in NSR 4 or 5.

22 Q. Now, you quote page 6136. Can you
23 turn to that, please.

24 A. Yes.

25 Q. I take it that it is the question and

1 the answer which starts on line 3 where Mr. Campbell
2 says:

3 "That's the nature of a prediction that
4 may well change. What I am worried about
5 is, is it possible to make a prediction
6 in which you have a reasonable degree of
7 confidence before you cut?

8 A. Yes."

9 That's what you are referring to?

10 A. Yes.

11 Q. And the discussion preceding that was
12 about NSR 4 and NSR 5 characteristics?

13 A. Yes.

14 Q. Correct. Now, Mr. Gordon said that
15 it was possible, but Mr. Gordon also said at page
16 6443-44, and this was in re-examination --

17 MS. SEABORN: The page number again, Mr.
18 Freidin?

19 MR. FREIDIN: 6443.

20 MS. SEABORN: Thank you.

21 MR. FREIDIN: Q. He is talking about --

22 MADAM CHAIR: Excuse me. Which volume
23 and line are you at, Mr. Freidin?

24 MR. FREIDIN: Same volume. I'm sorry,
25 Volume 37. I'm sorry. Volume 38, sorry.

1 MR. NEARY: The page number, Mr. Freidin?

2 MR. FREIDIN: I'm sorry,

3 MR. NEARY: The page number?

4 MR. FREIDIN: Go to 6442.

5 Q. You will see at that page that I was
6 asking some questions regarding the discussion between
7 Mr. Campbell and Mr. Gordon regarding non-treatable
8 productive forest areas, and I don't want to take the
9 time to go through all that of that information, but
10 let's go right to 6443 which is part of the answer.

11 MR. NEARY: A. Yes.

12 Q. Again, I apologize 6443. Go up to
13 the first answer. Mr. Gordon says:

14 "Well, what I finally agreed to saying
15 when Mr. Campbell was cross-examining me
16 was that, yes, you can predict those
17 areas that potentially could be
18 non-treatable."

19 He goes on at the bottom here, 6443:

20 "As well, if you do identify those areas
21 that are non-treatable and, for example,
22 there was a rule that said you shouldn't
23 cut them because you can't treat them,
24 you would then have to go back to the
25 office and make a decision as to whether

1 you were even going to go into that
2 area to cut what you could cut. If you
3 then made that decision, then what we
4 would have to do is go back into the area
5 before it is cut and mark those areas
6 that are non-treatable so that they would
7 not be cut. So when I put all that
8 together to me that is impractical and
9 unreasonable and in my estimation it is
10 an impossibility.

11 Q. In terms of sound timber management
12 practices you believe that to do the
13 sorts of investigations that you refer to
14 is required or are reasonable?

15 A. No."

16 So all I am suggesting to you is that if
17 you take that evidence into account that Mr. Gordon was
18 basically saying: Well, sure, Mr. Campbell, it is
19 possible to make that prediction, but really to do that
20 you have got to do all of this upfront investigative
21 work of going out in the field and in his view he said:

22 "...it would be impractical and
23 unreasonable and in my estimation an
24 impossibility to do."

25 Now, based on what I have referred you to

1 if it seems that there is -- that is some evidence
2 perhaps that should be taken into account when in fact
3 the Board is considering Mr. Gordon's evidence as you
4 have cited it; is that true?

5 You would agree that gives a fuller
6 picture?

7 A. That wasn't the impression I got from
8 Mr. Campbell's cross-examination.

9 Q. When you went through the transcripts
10 then, did you not look at the other evidence of Mr.
11 Gordon or did you -- how did you go about deciding what
12 portions you would refer to and which ones you
13 wouldn't?

14 A. I relied primarily on our
15 cross-examinations.

16 Q. All right. So when you looked at
17 your cross-examinations, I can understand why you would
18 go to your own counsel's cross-examination, and you
19 found something there which appeared to in fact support
20 your position, I take it then that as a routine matter
21 when you were preparing the witness statement you
22 didn't look to what that witness said either in chief
23 or what that witness said in cross-examination to other
24 parties or what that witness said in re-examination in
25 order to attempt to make sure that sort of the related

1 evidence which should really be put together to give
2 the full picture of that witness' evidence? You didn't
3 do that?

4 A. I sometimes examined their
5 evidence-in-chief, but other than that I relied
6 primarily on our cross-examinations.

7 Q. Okay. If we could go to the
8 footnotes in relation to Mr. Armson, footnote No. 90,
9 which is the second last full paragraph, this is where
10 you say that you want to include portions of site class
11 3 in in your definition of areas where the area of
12 concern planning process should apply. It says:

13 "The concern about operations in portions
14 of site class 3 arises from a report of
15 Mr. Armson in 1976 where the term fragile
16 site was used to describe the portion of
17 site class 3 considered too poor for
18 timber management."

19 A. We might be able to shorten this.
20 I'm aware that Mr. Armson was using that term based on
21 some other people's definition and that he was not able
22 to come up with a good description of what it meant.

23 Q. Okay. He was referring to -- I
24 believe the piece of the Armson report that you were
25 referring to, that's the 1976 report, is page 70 of his

1 report. Are you able to confirm that?

2 MR. BAX: A. This is Volume 27?

3 MR. NEARY: A. I may be able to.

4 Q. Yes, in Volume 27. I will tell you
5 what, have you got --

6 A. Just a minute.

7 Q. I will just tell you how --

8 A. I may have it.

9 Q. I will just tell you how I get that,
10 okay. Do you have Volume 27 in front of you of the
11 transcript?

12 A. Yes, I do.

13 Q. Just turn to page 2972.

14 A. I'm sorry?

15 Q. Sorry, Volume 17.

16 A. I'm sorry, which page are you
17 directing me to?

18 Q. Volume 17, page 2972. Do you have
19 that?

20 MADAM CHAIR: 2972 is not --

21 MR. NEARY: It is not in Volume 17.

22 MADAM CHAIR: Volume 17 starts at 2974.
23 So it must be Volume 16.

24 MR. FREIDIN: Let me see if I can shorten
25 this.

1 Q. At page 2972 of the transcript Mr.
2 Seaborn said to Mr. Armson:

3 "Would you agree with me, Mr. Armson,
4 that the accepted definition of
5 protection forest in 1976 would be the
6 total of fragile sites, the portions of
7 site class 3 considered too poor for
8 timber production and other?"

9 Whatever that means.

10 "A. They used that term and lumped it
11 together and I accepted that."

12 That's what he said.

13 Let me take the Martel approach. Would
14 you agree that Mr. Armson at no time equated portions
15 of site class 3 and fragile sites and the document that
16 Mr. Armson was referring to in his 1976 report didn't
17 do that either?

18 MR. NEARY: A. Yes.

19 MADAM CHAIR: Sorry. Repeat that
20 question, Mr. Freidin?

21 MR. FREIDIN: Q. Mr. Armson in his
22 evidence never equated portions of site class 3 with
23 something which was referred to as fragile site, nor
24 did the document that Mr. Armson referred to in his
25 1976 report; is that correct?

1 MR. NEARY: A. Yes, and if you look at
2 my written witness statement on page 16, in fact I
3 refer to that very transcript reference when I am
4 characterizing the Ministry of Natural Resources -- or
5 attempting to characterize the Ministry of Natural
6 Resources' position.

7 If you look at footnote 68, I refer to
8 that exchange between Ms. Seaborn and I am saying that
9 witnesses could not provide a current operational
10 definition of the term fragile.

11 Q. Right, but let me see if I can
12 shorten this. I am going to show you page No. 70 from
13 Professor Armson's 1976 report.

14 A. Yes.

15 Q. This was what was being discussed?

16 A. Yes.

17 Q. And even in this report that he was
18 just summarizing, fragile sites and portions of site
19 class 3 considered too poor for timber production were
20 two separate subcategories, correct?

21 A. I agree.

22 Q. And they were two subcategories of
23 what was described as protection forest?

24 A. Yes.

25 Q. Even that document, however, did not

1 equate portions of site class 3 considered too poor for
2 timber production with fragile sites?

3 A. Correct.

4 MS. SEABORN: Mr. Freidin, this was the
5 report that was filed as part of your Panel 2 evidence?

6 MR. FREIDIN: Yes. Just for ease of
7 reference what we are talking about, and what Mr. Neary
8 just said, is that they are not equated. There are
9 just different categories of protection forest in that
10 report.

11 MR. NEARY: Might I add that the Ministry
12 of the Environment has concerns about harvesting
13 activities on the portion of site class 3 considered
14 too poor for timber production for reasons elaborated
15 in my witness statement.

16 MR. FREIDIN: Q. In that relation, Mr.
17 Armson didn't indicate that he had a concern with
18 harvesting on those sites, did he?

19 MR. NEARY: A. No, he did not.

20 Q. Dr. Osborn who was examined about
21 these definitions, he didn't indicate a concern about
22 harvesting on those sites?

23 A. Yes.

24 Q. Neither of those two expert witnesses
25 were able to give you any assistance in terms of

1 exactly what was meant by that phrase "portions of site
2 class 3..."

3 A. "...considered too poor for timber
4 production."

5 Q. "...considered too poor for timber
6 production."

7 They couldn't give you any assistance in
8 that regard?

9 A. And I refer to the relevant testimony
10 in my footnote 18 -- 68, rather.

11 Q. If they couldn't do it, on what basis
12 did you conclude that you could attribute to it a
13 certain meaning which would then result in these being
14 areas where there should be concern such that the area
15 of concern planning process should apply?

16 A. I think we've made it clear in our
17 written evidence that we have concerns about logging
18 operations in areas where regeneration may be less than
19 successful or that there may be long-term nutrient
20 production -- nutrient depletion problems.

21 When I read the words that a part of the
22 forest is considered too poor for timber production I
23 interpreted that as being indicative of an area that
24 may have problems in terms of long-term productivity.

25 Q. How do you identify those areas?

1 They aren't able to tell you how to identify them.

2 What expertise do you have to say: Well,
3 Professor Armson and Dr. Osborn, you may not be able to
4 identify those, but I think that probably a good way to
5 identify them is this? That's where I am having the
6 difficulty.

7 A. We made our best estimate of what
8 could constitute that portion of site class 3. The
9 people within MNR who came up with this definition
10 couldn't be identified and ideally it would have been
11 the people to clarify this.

12 Q. So the people at MNR, the evidence of
13 MNR weren't -- those two witnesses didn't feel that
14 they could try and identify those sites, but MOE
15 decided that they would -- you would do that?

16 A. No, they did not identify the people
17 in MNR who came up with this phrase in the first place.

18 Q. But made certain assumptions about
19 what was causing some areas to be referred to in a
20 report pre 1976 as being site class 3, too poor for
21 timber production.

22 I guess what I am just getting at is, I
23 thought Dr. Osborn and Professor Armson were fairly
24 forthright, credible witnesses experienced in their
25 field and they didn't feel that it was reasonable to

1 come up with this restriction and you don't have the
2 expertise that they do in this area, but you felt that
3 you could and you could identify the things which gave
4 rise to these portions of site class 3. I mean, they
5 couldn't do it.

6 The Board at the end is going to be
7 saying: Well, do we accept Mr. Neary's evidence or,
8 putting it another way, do we sort of -- we are not
9 going to rely on Professor Armson and Dr. Osborn in
10 that regard.

11 That's the dilemma that I'm trying to
12 deal with.

13 A. Well, the Ministry of the Environment
14 has been confused on more than one occasion by changes
15 in definitions on certain sites.

16 An example is one that we tabled during
17 our evidence where at one point circa 1985 sites with
18 less than 30 centimetres of soil by implication are
19 considered to be environmentally unstable.

20 By the time the EA was amended in 1987
21 evidently it was considered at MNR that were
22 environmentally stable and were open for normal
23 operations.

24 Q. All right.

25 A. We interpret it as another instance

1 where perhaps some concerns were formulated within the
2 Ministry of Natural Resources by people that couldn't
3 be identified. The fact that people couldn't be
4 identified nor the site characteristics associated with
5 these sites didn't negate our concern.

6 Q. Right, but you were having a concern
7 about something you really didn't know what it was.

8 Something developed in the past, you had
9 two very credible witnesses from MNR come forward,
10 people imminent in their fields and were dealing with
11 the present and today and they said: Today if we are
12 concerned about operating on certain sites, just forget
13 that.

14 They told you the sites that they thought
15 there should be concern about. They told you how they
16 felt it should be addressed. They were talking about
17 in the present, and it seems to me that -- why aren't
18 you willing to accept their evidence?

19 I hope you are not suggesting that
20 Professor Armson and Dr. Osborn were somehow trying to
21 pull a fast one on the Board by changing the definition
22 or something.

23 A. A lot of the issue that we were
24 talking about here, Mr. Freidin, and I think that we
25 have seen on the whole nutrient depletion is that there

1 is a certain lack of consensus and this is one of those
2 areas where --

3 Q. This isn't a lack of consensus. This
4 is just a mystery.

5 MS. SEABORN: I think it is probably a
6 matter for argument, Mr. Freidin.

7 MR. FREIDIN: All right.

8 MADAM CHAIR: Excuse me, Mr. Freidin,
9 before you move off this point. The Board's
10 recollection of some of the evidence of Professor
11 Armson and Dr. Osborn touches on a point that you
12 raised in your evidence, Mr. Neary, and that is that
13 the FRI is a pretty fuzzy tool to identify site types
14 in advance of actually getting in there and seeing what
15 you have.

16 Some of the evidence about the site type
17 3 business was that you might not able to tell very
18 well from the FRI what you have got. You might go into
19 a site type 3 and find that you can do normal
20 operations or you might get in there and find it is
21 something quite different than you might have thought.

22 MR. FREIDIN: That was site type 4, Madam
23 Chair.

24 MADAM CHAIR: Or site type...

25 MR. FREIDIN: Site class 4, protection

1 forest.

2 MADAM CHAIR: Okay. I am getting
3 confused then. Site class 4 is what was difficult to
4 tell ahead of time.

5 Now, site type 3, is it your -- site
6 class 3, is it your evidence, Mr. Neary, that you can
7 tell, you know in advance of investigating it what you
8 have there?

9 MR. NEARY: No. We're aware that the
10 site classifications are aligned dividing -- you have
11 height over age and there is a broad spectrum of
12 relationships that you will find in different stands of
13 the same species across the boreal forest and there has
14 been a line drawn at some point and says everything
15 below this line is site class 4 and everything above
16 this line is site class 3.

17 Just as there may be error associated
18 with assigning sites to site class 4, there may be
19 error associated in assigning sites to site class 3.

20 We elaborate on what we consider to be
21 portions of site class 3 and they would be ones that
22 are in the lower range of site class 3. Perhaps they
23 should legitimately be classified as protection forest.

24 We are asking for the area of concern
25 planning process for that type of site because we are

1 aware that these growth conditions are on a continuum
2 and it is convenient for management purposes to have
3 these, you know, delineations and boundaries, but just
4 as we accept, and I think we make it clear that we
5 accept, that you can incorrectly classify a protection
6 forest site if you go and have a look at it and say:
7 Well, geez, the photointerpreter was wrong, the same
8 applies to sites that are in the lower end of site
9 class 3. Perhaps they should have been classified as
10 protection forest, and that's what we are trying to
11 capture with that portion of our term and condition.

12 MR. FREIDIN: Q. But don't we have the
13 same problem in doing that as Mr. Gordon had with
14 predicting areas that might become NSR 4 and 5?

15 How do you determine whether when you
16 look at the map, the FRI map, when you see site class
17 3, how do you know whether it is at the lower end, the
18 middle or the top of site class 3 unless you actually
19 go to the site and look at it?

20 MR. NEARY: A. I have seen some FRI maps
21 where there is a secondary division in the height over
22 age.

23 Q. The height over age --

24 A. No, I mean where it isn't just site
25 class 1. It would be --

1 Q. Site class 2, site class 3, site
2 class 4?

3 A. No, there are subdivisions sometimes
4 indicated in that.

5 Perhaps Mr. Bax can correct me if I am
6 wrong, but it seems to me that I have seen FRI maps
7 that indicate...

8 Q. I'm not familiar with that. Mr. Bax,
9 are you aware of that?

10 MR. BAX: A. You mean through the FRI
11 qualification itself?

12 No, but they have coded it. I have seen
13 FRI maps where it is coded for that particular area.
14 Similar to the Red Lake map that was here by a site
15 classification further than that provided in the FRI
16 stand description.

17 Q. Right. But they didn't do that from
18 the FRI? Perhaps they were able to cruise those areas.

19 MR. NEARY: A. Perhaps that's what I'm
20 referring to. I may be incorrect.

21 Q. Now, the last part of -- by the way,
22 when we look at 32(b) and we look at then the
23 characteristics - we are back on page 20 of your
24 witness statement - these are sites that you say the
25 characteristics give rise to your concerns and that the

1 areas of concern planning process should apply.
2 Untreatable based on topography -- sorry. We have
3 dealt with that. Let's go down to the last one.

4 "These same planning requirements shall
5 apply to areas untreatable based on
6 residuals."

7 A. Yes.

8 Q. Do you see that part. Here you are
9 saying you are concerned about areas being untreatable
10 based on residual, and Mr. Bax certainly gave evidence
11 as to why he is concerned about that.

12 On the other hand, you are saying you
13 don't want -- you are concerned about removing smaller
14 diameter trees, you know, because as a result of this
15 chipping technology if you remove those smaller
16 diameter trees those trees basically have left what we
17 call residuals, would the very trees which would in
18 fact make the area untreatable based on residuals.

19 So it seems that to me that you are on
20 the horns of the dilemma. On the one hand you want
21 them to say and, on the other hand, stay because you
22 are concerned about this nutrient issue, but on the
23 other hand you are saying get them the heck out of
24 there because they are making the area untreatable for
25 renewal.

1 MR. NEARY: A. I formulated this term
2 and condition. Perhaps I can elaborate.

3 Q. And hopefully when you do so you will
4 indicate to me whether there is in fact a dilemma or
5 contradiction and how do we deal with that?

6 A. It was our understanding of the
7 Ministry of Natural Resources' testimony that where you
8 go in and do partial cutting that it is some form of
9 highgrading really where you're taking out one tree
10 species and leaving the site, and these are the types
11 of sites that we are trying to refer to here, that
12 where you are going in, say, taking out a conifer
13 volume from a mixedwood stand and then you can't go in
14 and regenerate it to a conifer because you have left
15 all of the other tree species standing.

16 We do not have concerns about high
17 residuals from a nutrient standpoint except on the
18 sites that we have identified in term and condition
19 21(c) or --

20 Q. Just hold on.

21 While the Board has got the witness
22 statement in front of them, 21(c) is produced on page
23 27, Madam Chair.

24 A. We believe that the area of concern
25 planning process envisaged in term and condition 32(b)

1 may result in restricting full tree logging on some of
2 these other sites as well just as an outcome of that
3 planning process, but for sites where nutrients are not
4 a concern, then our concern about the residuals relates
5 to the fact that by leaving them on the site you cannot
6 regenerate to a desired working group.

7 Q. Okay. Do I take it then if we look
8 at 32(b) on page 20 of your witness statement that the
9 concern -- when you talk about being concerned about
10 growth limitations inherent in the site--

11 A. Yes.

12 Q. --I take it that that somehow is
13 related to the first series of characteristics, PF,
14 PFR, untreatable based on topography, portions of site
15 3 and shallow soils?

16 This concern about areas untreatable
17 based on residuals is a concern not based on growth
18 limitation inherent on the site, but the ability just
19 to --

20 A. Not necessarily. There may be high
21 residuals on a PF site.

22 Q. Okay. Let's just go right to the
23 heart of your concern. First of all, what about the
24 dilemma?

25 A. Well, the dilemma is you go through

1 the area of concern planning process and you come up
2 with a modification of a harvest activity that will try
3 and protect the value that you have identified in the
4 site which is its progeny or sensitivity.

5 Q. Now --

6 A. And you go through the tradeoff
7 process inherent in the area of concern planning
8 process as was shown in our Magpie Forest example.

9 Q. We will get to the Magpie Forest
10 example in a minute. I almost forgot.

11 Areas untreatable based on residuals, you
12 have a concern going in and taking out just the conifer
13 content of the stand and leaving the stand in a
14 condition that it's untreatable based on residuals.

15 Is it MOE's position that those stands
16 should not be harvested?

17 A. No. I think our position is as
18 outlined here, just the rationale for operating in
19 areas where regeneration -- I'm sorry, Madam Chair, I
20 am reading from page 21 here, the first big paragraph
21 called Untreatable Sites. In the last sentence, it
22 says:

23 "It is MOE's position that the rationale
24 for operating in areas where regeneration
25 success is likely to be unsatisfactory

1 be made explicit in the planning
2 process."

3 Q. Where are you referring to?

4 A. The very last sentence.

5 Q. On which page, sorry?

6 A. 21. Term and condition 32(b), Mr.

7 freidin, does not ban operations anywhere.

8 Q. Okay.

9 A. It calls for --

10 Q. More documentation in certain cases?

11 A. It may result as a result of the
12 application in the area of concern planning process in
13 not operating.

14 Q. It would result in more documentation
15 in relation to those particular sites than is presently
16 the case?

17 A. In some units it is already
18 happening. Presumably in the units where the area of
19 concern process in not applied to these sites, then
20 yes.

21 Q. All right. Now, the only example
22 that you have of where it was applied is the Magpie
23 Forest?

24 A. There was not an exhaustive search of
25 all timber management plans.

1 Q. And you obviously find some comfort
2 in the fact that one plan at least, one forester has
3 done something similar to what in fact you are
4 advocating?

5 A. We look upon it as a demonstration
6 that is a practical approach.

7 Q. The other examples that you cited --
8 let's see whether we can cut through this fairly
9 quickly. If you go to page 16 and 17 of the witness
10 statement, starting on 16 in the last two lines:

11 "It should be noted, however, that
12 fragile sites have been explicitly
13 recognized in the timber management
14 planning process and the planning
15 approach similar to the AOC planning
16 process has been used in developing
17 prescriptions for those sites."

18 That's the Magpie example which you went
19 through in your evidence?

20 A. Yes.

21 Q. "Similarly, the term sensitive area
22 as a site descriptor has always been used
23 in timber management planning with
24 sensitive areas being identified as areas
25 of concern."

1 If I could just have one moment.

2 Am I correct that the reference to the
3 Armstrong Forest example, footnote No. 70, where you
4 say the sensitive area was identified as an area of
5 concern--

6 A. Yes.

7 Q. --am I correct that that area in fact
8 which was identified as sensitive and to which the area
9 of concern planning process was applied is in effect an
10 ANSI, an area of natural and scientific interest, which
11 in fact shows up on the values map?

12 A. I would have to verify that. I would
13 have to look at the 911. Can I do that?

14 Q. Please, do that.

15 MADAM CHAIR: We are getting close to our
16 morning break, Mr. Freidin. Actually we are past.
17 Would you like to take it now and give Mr. Neary a
18 chance to look at this evidence?

19 MR. FREIDIN: Sure. That would be good,
20 but I will just tell I am where I am going.

21 MADAM CHAIR: Good idea.

22 MR. FREIDIN: So that he can make sure he
23 gets everything.

24 Q. I looked at that plan and the
25 refernece that you are -- pages 149 to 150 that you

1 referred to from the Domtar draft TMP come from
2 Appendix H?

3 MR. NEARY: A. Yes.

4 Q. It is called values map and so --
5 values map listing. So what you have got if you then
6 go to page 145, 146, right through to 150, and I want
7 you to confirm for me that really what was dealt with
8 as an area of concern there was not a fragile or
9 sensitive area out in what we have described as normal
10 operating areas. It is in fact what we describe as a
11 non-timber value identified through some other program
12 through -- it is an ANSI.

13 A. Okay. I wasn't aware of that. I was
14 relying on the term sensitive area on page 149.

15 Q. I want you to confirm for me that
16 that sensitive area, that's the old reference or
17 terminology to what we now call ANSIs.

18 I am suggesting that it was dealt with as
19 a value -- a non-timber value as an ANSI it is of a
20 different nature than what you were talking about in
21 your term and condition.

22 If you look at the other reference which
23 is the reference to the Trout Lake TMP, would you just
24 confirm for me that indeed -- I know you will confirm
25 for me that they did use the words fragile or

1 sensitive, maybe they used both, but in that plan where
2 they did that they did not implement an area of concern
3 planning process.

4 If you could just sort of confirm that
5 for me over the break that will speed things along and
6 we can just go on to the next area of questioning.

7 Do you understand what I want you to do?

8 A. Yes.

9 MR. FREIDIN: I think now is a good time
10 to break then, Madam Chair.

11 ---Recess at 10:35 a.m.

12 ---Upon resuming at 10:50 a.m.

13 MADAM CHAIR: Do you have any sense of
14 how long the cross-examination will take?

15 MR. FREIDIN: A day.

16 MADAM CHAIR: You expect to go until four
17 or close to the end of the day?

18 MR. FREIDIN: Yes, if I have to ask you
19 to go a little bit later I will know early this
20 afternoon.

21 MADAM CHAIR: How long will you be in
22 re-examination?

23 MS. SEABORN: Very brief, Madam Chair, so
24 far.

25 MADAM CHAIR: Thank you.

1 MR. FREIDIN: Q. Mr. Neary, were you
2 able to look at those other two plans or any portions
3 that you had?

4 MR. NEARY: A. I looked at the Armstrong
5 forest and I believe in my evidence I said that they
6 were identified as areas of concern and called
7 sensitive areas, and that's what it says.

8 I will agree with you that perhaps
9 sensitive areas and ANSIs are one in same. I wasn't
10 aware of that.

11 Q. The other plan, did you have enough
12 material to comment either way?

13 A. I do not have enough material to
14 comment either way. I don't think I construed in my
15 evidence that the area of concern planning process was
16 applied in that instance.

17 Q. Great. Thank you very much. Could
18 you turn to your term and condition, it's on page 7,
19 your term and condition 21(c) regarding full tree
20 harvest.

21 A. Yes.

22 Q. I want to deal with it sort of on two
23 levels. We have the specific wording, and you will
24 recall that Mr. Cassidy had some concern about the
25 wording of some of your terms and conditions and

1 whether in fact it was clear and whether the intent
2 came through or not.

3 A. I tried to clarify that this morning,
4 but...

5 Q. Right. Let's look at No. 1. It
6 basically says in the preamble:

7 "In order to reduce nutrient losses by
8 full tree logging and full tree chipping
9 the following restrictions shall be
10 applied to harvest areas greater than
11 eight hectares in the area of the
12 undertaking. "

13 No. 1 says:

14 "Tree length, cut to length and shortwood
15 logging methods exclusively be utilized
16 on very shallow and shallow sites."

17 Now, I read that, and would you agree
18 that the interpretation that's somebody would give to
19 that would be that if you had a site which fell within
20 the definitions that you have given for very shallow
21 and shallow you have no option, that you would have to
22 use one -- pardon me, you would not be allowed to use
23 full tree harvesting?

24 A. That's correct.

25 Q. No discretion. If it fell within the

1 definition, if it was 0 to 30 centimetres, whatever it
2 is, you could not by that term and condition full tree
3 log that site?

4 A. With the clarification that I tried
5 to give the Board this morning, that if there is a
6 modification of full tree harvest which provides for
7 the distribution of the slash and nutrient bearing
8 twigs and things like that around the site we would not
9 consider that to be full tree logging.

10 Q. All right. But without some ability
11 to leave the chips on the site through some of this new
12 methodology that was discussed the other day, you would
13 say that interpretation is no discretion, no full tree
14 harvest? That's the intent?

15 A. That's the intent.

16 Q. The same with No. 2:

17 "Full tree logging and full tree chipping
18 operations be restricted to stands
19 supported by relatively deep mineral
20 soils."

21 I interpret that and would it not be
22 reasonable to interpret that as saying to somebody, you
23 can only full tree log on stands supported by
24 relatively deep mineral soils? That's the only time
25 you can do it?

1 A. Yes.

2 Q. Why did you choose for the purposes
3 of your term and condition to make that restriction
4 such that you can only full tree log on sites which
5 have deep mineral soil as opposed to deep organic soil?
6 Why didn't you just say deep soils? I assume you chose
7 that distinction for a reason.

8 A. We adopted that from the Timner,
9 Savinski and Marek wording, but it is my understanding
10 that sites with deep organic soils, while they may have
11 large total amounts of nutrient, they are not
12 necessarily available nutrients.

13 Q. As a rule which applies all the time?

14 A. No, as a general rule.

15 Q. Well, if it doesn't apply all the
16 time, this term and condition, the way it is worded,
17 would not allow someone to in fact full tree log on a
18 site which had deep mineral soils where there was no
19 problem with available nutrients?

20 A. No, it allows for full tree logging
21 on deep mineral soils.

22 Q. Pardon me, deep organic. If somebody
23 comes across a deep organic site and says: Look, there
24 is no problem with nutrients on this site, it one of
25 those situations where there are all kinds of them,

1 this term and condition if it is imposed would say:
2 Sorry, you can't full tree log there. Isn't that the
3 effect?

4 A. That's the effect.

5 Q. You just told me that there are sites
6 you believe where in fact you have deep organic soils
7 and there is not a problem with nutrients.

8 If that's the case, why would you want to
9 have a rule that would prohibit any full-tree
10 harvesting on sites with deep organic soil?

11 A. Because I haven't seen the results of
12 any studies conducted on deep organic soils which
13 address the problem of nutrient availability on those
14 types of sites.

15 Mr. Freidin, we are very interested, as I
16 said elsewhere in my evidence, on clarifying a lot of
17 this through well-designed studies.

18 Q. I understand that and I think the two
19 ministers have agreed a long time ago that there would
20 be an examination of full tree logging and its
21 implications for nutrients on the site.

22 The disagreement, obviously, is whether
23 the steps that you are proposing in the interim are
24 necessary or not. That's the decision that is --
25 that's the issue before the Board.

1 A. Yes.

2 Q. You don't have any study that says
3 there is a problem with doing full tree logging on
4 sites with deep organic soils?

5 Have you got a report that says you
6 shouldn't able to full tree log on any sites which have
7 deep organic soils?

8 A. I haven't read one.

9 Q. So are you saying then that full tree
10 logging should not be allowed on any site unless there
11 has been a study to determine whether in fact it causes
12 a problem for nutrient cycling?

13 A. No. This is where you go to your
14 understanding of the processes and in most cases deep
15 organic soils are deep organic soils because there is
16 something slowing down the decomposition of the organic
17 matter. That frequently is a high water table.

18 Q. Well, Mr. Neary, are you familiar
19 with the Clay Belt Forest Ecosystem Classification
20 Field Guide?

21 A. I've seen it. I haven't read it
22 cover to cover.

23 Q. All right. I apologize. I don't
24 think I advised you that I might want to refer to this
25 document. Do you have a copy?

1 MR. BAX: A. Yes, we do.

2 Q. Can you give it to Mr. Neary, please.

3 MADAM CHAIR: Remind the Board of that
4 exhibit number, Mr. Freidin?

5 MR. FREIDIN: Exhibit 330. Hopefully you
6 have yours.

7 MADAM CHAIR: Here it is.

8 MR. FREIDIN: Q. Could you turn to
9 operational group 13.

10 MR. NEARY: A. Can you give me a page
11 number?

12 Q. As soon as I find it. Yes, page 32.
13 Could you describe that site for me in terms of the
14 type of soil, its depth and whether you believe it is a
15 site on which you would be concerned about available
16 nutrients if you full tree logged it.

17 A. Do you want me to read what it says?

18 Q. No. You can either read it or answer
19 my question however you feel you must. If you think
20 you have to read it, that's fine.

21 What I want to know is, is that a site --
22 you got the question.

23 A. Well, it's an organic soil type,
24 4,260 metres deep.

25 Q. Is that deep according to your

1 definition for the purposes of interpreting your
2 proposed term and condition?

3 A. Our term and condition doesn't
4 include deep organic sites in terms of restricting or
5 recommending that full tree logging be allowed. So it
6 doesn't --

7 Q. Well, it does. It does because it
8 says that full tree logging be restricted to stands
9 supported by relatively deep mineral soils.

10 So in effect it's saying full tree
11 logging because it is restricted to those stands the
12 mineral is obviously not permitted on deep organic
13 soils.

14 So although it doesn't say it in those
15 very words, that's the clear interpretation that one --
16 it is the only interpretation that one can give to it;
17 is that correct?

18 A. Would you like me -- and I'm not too
19 sure what you want me to do at page 32.

20 Q. What I am suggesting is Mr. Armson
21 tells me that operational group 13 is a deep organic
22 soil, that that site as a result of the site conditions
23 described, particularly the telluric water which flows
24 through those sites is extremely nutrient rich and that
25 you can full tree log that without any concern about

1 availability of nutrients for succeeding rotations?

2 A. I would assume that by the strong
3 ground water flow.

4 Q. All right. So if that's the case,
5 your term and condition, the way it is written, would
6 not permit full tree logging on that site wehre it
7 would have no adverse implications for nutrients. We
8 agree on that; is that correct?

9 A. Our term and condition would not
10 allow full tree logging on that type of site.

11 Q. I am suggesting to you that in an
12 attempt to address the concern you have drafted a term
13 and condition which has an undesirable consequence and
14 as a result the term and condition should not be
15 adopted in this present form and somebody better look
16 at it to make sure those kinds undesirable situations
17 don't arise.

18 A. What are you asking me to do here?

19 Q. Don't you think it should be amended
20 somehow so that people are not prohibited?

21 A. If there are studies indicating that
22 this type of site -- I've been trying to be clear about
23 the intent of this term and condition, Mr. Freidin, and
24 if there are studies or data that haven't been
25 presented in front of the Board that indicate that this

operational group 13 is in fact -- does have large supplies of available nutrients, then the intent of the term and condition would not be to restrict full tree logging because the intent is to preserve nutrients on sites that are susceptible to nutrient depletion.

Q. Therefore, would you not agree that if you had a concern -- if you want to give effect to your intent but not have a situation like this -- let's go back.

Professor Armson says you can harvest on that site and you shouldn't have to be worried about it. Now, he may not be able to point to a study either, but he may as a result of his expertise come up and give that evidence.

Now, wouldn't you say: Well, gee, I guess we better allow you to go on that, that's okay because we have now have expert evidence that it's okay to do that. He doesn't have a study.

Don't you think we should be allowed or Industry should be allowed to go on that site and full tree log?

A. My preference would be to see some kind of evidence that would indicate that that was true.

Q. Mr. Neary, what you are suggesting is

1 that you have to have a study on nutrient cycling on
2 every kind of site before you would be satisfied that
3 you could full tree log it. That's what I think you
4 are saying.

5 A. No. The intent is to protect sites
6 where nutrient limitations are a concern.

7 Q. Okay. Let's try and speed this up.
8 Would you agree that it would be an undesirable result
9 of your term and condition that you would not be
10 permitted to full tree log operational group 13 if Mr.
11 Armson's advice to me is correct?

12 A. I would prefer to err on the side of
13 caution in these types of areas.

14 Q. Okay.

15 MADAM CHAIR: Excuse me. Mr. Neary,
16 whether this term and condition with respect to deep
17 mineral or organic soils applies, in the event that the
18 slash was replaced on the site you could proceed on
19 either of those sites?

20 MR. NEARY: Yes, because it would not
21 fall into our definition of full tree logging.

22 MADAM CHAIR: I have a question for Mr.
23 Bax. Are you familiar now with situations where slash
24 is replaced on the site? Is it done very frequently?

25 MR. BAX: No. I'm familiar with it, but

1 it's done on an infrequent basis.

2 MADAM CHAIR: Could you explain very
3 quickly to the Board how slash would be replaced on the
4 site if you didn't have a rotar limb device that left
5 it there in the first place. Would you simply drag it
6 back from the landing?

7 MR. BAX: What I'm familiar is with
8 grapple skiddres, yes. If there's a large pile they
9 will -- as they bring a load of logs, then they dump
10 them and then on the way back they will go to where the
11 slash piles were, grab some and redistribute them over
12 the site, but it is not on a consistent basis.

13 MADAM CHAIR: What is the cost of that
14 sort of operation? Is that a difficult and costly
15 thing to do?

16 MR. BAX: Well, the skidder is going back
17 anyhow to get the next load of logs.

18 MADAM CHAIR: So it is the time involved
19 in collecting the slash?

20 MR. BAX: Yes.

21 MR. FREIDIN: Q. Just one other sort of
22 real life example in relation to No. 1, these areas
23 where you say very shallow and shallow sites.

24 The Board went on its very first site
25 visit and visited area north of Dryden and it was

1 undulating area of bedrock outcrops where in fact the
2 area had been full tree logged and they observed
3 regeneration which occurred on that area.

4 It is my information that you can have
5 some of those sites and they can be very nutrient rich
6 -and grow good trees in those cases either by seeding
7 from the air where you will get seed going into
8 fissures and taking advantage of all the nutrients
9 there, seeds may also go into the pockets of soil which
10 are created by the undulating terrain or you can
11 actually plant in those areas.

12 Now, am I correct that your term and
13 condition as written would not permit full tree logging
14 to occur on those sites followed by the successful
15 regeneration methods that I have described?

16 MR. NEARY: A. I wasn't on that site
17 visit, but just from your verbal description it sounds
18 like an area where there is a very limited volume of
19 soil. It would make sense to me to conserve as many
20 nutrients on a site like that as possible.

21 I describe both in my oral and written
22 evidence that the fact that you get regeneration, and
23 this is supported by some of the studies, is that the
24 limitation on nutrients may not be obvious for 10, 20,
25 30, 40 years. It may not be obvious for more than one

1 rotation.

2 According to the principles that we are
3 trying to put forward with this term and condition, it
4 would make more sense to me in an area where you do
5 have very limited amounts of soil to conserve as many
6 of the nutrients as you possibly could.

7 Q. Now, you relied on the Timner article
8 for your recommendation because you felt there were
9 practical, right?

10 A. Yes.

11 Q. Would you agree, Mr. Neary, that this
12 term and condition is to apply to all sites in the area
13 of the undertaking and all species?

14 A. That's the intent.

15 Q. Would you agree with me that the
16 Timner and Marek paper only dealt with spruce, black
17 spruce in an area in the Beardmore area?

18 A. No, he looked at hardwood stands as
19 well.

20 Q. In the Beardmore area?

21 A. Yes.

22 Q. Do you agree that he, in fact,
23 indicated that he would limit the recommendations to
24 the Beardmore area and, in fact, would not recommend
25 that they be extrapolated to other areas of the "

1 province?

2 A. Yes.

3 Q. But you, in fact, have in your term
4 and condition not only disregarded that recommendation
5 by the authors of that paper, you have applied it
6 across the area of the undertaking and you have even
7 applied it to species and conditions which weren't even
8 considered in the Marek paper; is that correct?

9 A. That is correct.

10 Q. On what basis then do you say to the
11 Board that that is a reasonable application of that
12 report?

13 A. This is really the crux of the
14 problem that we're dealing with, Mr. Freidin. The
15 witnesses for the Ministry of Natural Resources and
16 OFIA relied upon studies, some of which were done on,
17 you know, nutrient rich sites or very deep soils and
18 concluded that there wasn't a nutrient limitation and
19 assumed that for the area of the undertaking you could
20 proceed with no restriction.

21 We are aware of studies, the Timner study
22 being just one of them, that indicate that there are
23 sites that nutrient limitations may be a concern and
24 what we're trying to do is say that you can look at
25 these studies, assume there is no problem across the

1 area of the undertaking, you can look at these studies
2 and say there is a problem across the area of the
3 undertaking or you can make a first crack at
4 identifying areas where the concern is likely to exist
5 and that's what we have done in term and condition
6 21(c).

7 Q. Have you done any calculation to
8 determine the area of the undertaking upon which full
9 tree logging would be prohibited as a result of the
10 applicant of these terms and conditions?

11 A. No, the Board has asked me that and
12 Mr. Cassidy asked me that. We had endeavored through
13 cross-examination, interrogatories and an undertaking
14 to determine that area from the Ministry of Natural
15 Resources and we were not able to come up with that
16 information.

17 Q. All right. Well, I guess the Board
18 will have to deal with the difference in opinion
19 amongst the witnesses. I don't think I can do much
20 more on that paper.

21 A. Yes.

22 Q. Are you aware of the differences, if
23 any, between nutrients left on a site after it being
24 disturbed by logging as opposed to it being disturbed
25 by wild fire?

1 A. Yes.

2 Q. What's your understanding?

3 A. My understanding is that the
4 nutrients left on site after a wild fire - now this is
5 depending on fire intensity and temperature and things
6 like that - are generally more available than they are
7 after logging.

8 The decomposition processes of the
9 organic matter left after logging may mean that the
10 nutrients are still on site, but become available
11 during the mineralization process of the organic
12 matter.

13 Q. In the case of wild fire you say an
14 intense fire, the nutrients which get left on the site
15 are there in the form of ash, correct?

16 A. Well, you mean chemical form?

17 Q. Well...

18 A. They are mineralized nutrients or
19 partially mineralized. Some of them are retractive in
20 terms of, you know, the carbonized material.

21 Q. Some of that carbonized material
22 actually just leaves the site in the air?

23 A. Yes.

24 Q. The stuff that's left there is fairly
25 readily available?

1 A. The part -- yes. Again, depending on
2 fire intensity.

3 Q. Right. When it is readily available
4 like that it gets flushed through the system very
5 quickly?

6 A. Depending on how much vegetation is
7 left on the site.

8 Q. Right. But if you have an intense
9 fire there is not very much vegetation left on the
10 site, it is gone?

11 A. Correct.

12 Q. In that situation the nutrients which
13 are left there in the form of ash get flushed through
14 the system relatively quickly?

15 A. Certainly the papers that I have seen
16 usually describe a pulse of nutrients out of a site
17 after wild fire.

18 Q. Right. When in fact you log you
19 leave residuals, when you log you leave lesser
20 vegetation, shrubs, twigs, when you log you don't
21 remove the forest floor or the duff layer; isn't that
22 correct?

23 A. Depending on the logging system.

24 Q. Well...

25 A. You referred to leaving residuals.

1 One of the things that we are concerned about is a
2 logging system where perhaps some of the residuals
3 would be removed as well.

4 Q. All right. Given that, would you
5 agree with my comments? Subject to that qualification
6 would you agree with my statement?

7 A. Your statement being that there are
8 more nutrients left on site after logging?

9 Q. That's exactly what I'm suggesting to
10 you.

11 A. I would have to qualify that by, you
12 know, intensity and degree of fire and all sorts of
13 other things.

14 Q. I am willing to limit my discussion
15 to intense fires.

16 A. There is a potential after logging
17 for more nutrients to be left on site, particularly if
18 it is not full tree logging than after a very intense
19 wild fire.

20 Q. Let's deal with the example that I
21 would like to put to you. In an intense fire there are
22 more nutrients left on the site after logging than
23 there are after an intense wild fire?

24 A. No, I can see all -- I can't agree
25 with that as a general statement. I can just see too

1 many different possibilities.

2 Some of the nutrients may be captured in
3 the sea horizon depending on the soil depth, it depends
4 on the porosity of the soil, the amount of lateral
5 water flow, how much is going to get leached off the
6 site, it depends on how rapidly the shrub layer comes
7 back and fixes some of the nutrients.

8 Q. You have indicated in your evidence
9 that you are concerned about regrowth, the faster you
10 get -- the more regrowth the better because there are
11 sinks?

12 A. Yes.

13 Q. Well, if you leave vegetation after
14 logging you have got sinks left there, whereas if you
15 have a wild fire, an intense wildlife and it removes
16 all the shrubbery you don't.

17 Just dealing with that you have got more
18 nutrients, more a supply of material that's going to
19 provide nutrients on the site after logging than you do
20 after wild fire. Just talking about the shrubs.

21 A. Yes, again, depending on the
22 intensity of the fire.

23 Q. We would have to look to other
24 experts to, in fact, give evidence as to whether the
25 frequency of intense wild fire as opposed to sort of

1 low intensity fires, right? You are not an expert in
2 that area?

3 A. That's a real quagmire and I'd prefer
4 to stay away from it.

5 Q. Okay. If Mr. Armson said that there
6 was more nutrients -- if he agreed with the proposition
7 that I put to you, would you disagree with him?

8 A. As a categorical statement, yes.

9 Q. Okay. Now, somewhere in your witness
10 statement, Mr. Neary, and you can help me perhaps, you
11 say that Mr. Armson said that he would exercise caution
12 on certain site types.

13 A. Yes.

14 Q. Where is that reference in your
15 witness statement? Sorry, I just lost the note.

16 A. It is on page 3, third paragraph,
17 first sentence.

18 Q. All right. It says:

19 "Mr. Armson did concede that on certain
20 site types caution would be exercised
21 when using full tree logging."

22 The reference is to Mr. Armson, footnote
23 No. 6, Volume 76, page 12,777.

24 Now, did you read the transcript -- all
25 right. So that's the portion that you were referring

1 to. Let's go to 12,777 at Volume 76. Would you agree
2 with me -- and I assume that what you are relying on is
3 line 6 to 10?

4 A. Yes.

5 Q. A question from Ms. Seaborn:

6 "So aren't we in a situation where at the
7 very least what we need to do is be
8 cautious when we are embarking on full
9 tree harvesting?

10 A. I believe that on certain specific
11 sites we would be cautious."

12 That is the quote I assume you are
13 relying on?

14 A. Yes, I am relying on that quote.

15 Q. I would suggest to you, Mr. Neary,
16 and I would ask for your comment that there is a vast
17 difference between someone saying I believe that on
18 certain specific sites we would be cautious and on the
19 other hand saying I believe that on certain specific
20 site types we would be cautious. Would you agree?

21 A. Well, it depends on the proposition
22 and it goes to our contention that there are general
23 standard site types across the province.

24 I would view that a site, every site --
25 you know, again, it depends on how closely you

1 characterize and look at a site. Every site is unique
2 to a certain degree, but for certain purposes,
3 certainly for the purposes of the activities that are
4 described under this class environmental assessment,
5 you treat certain sites as representative of a type.

6 Otherwise I can't see how you can do a
7 class environmental assessment, Mr. Freidin.

8 Q. Well, Mr. Neary, Mr. Armson did not
9 say that he would exercise caution on certain specific
10 site types. He didn't say that, did he?

11 A. No, he did not say that nor do I
12 quote him saying that.

13 Q. I suggest to you--

14 A. I'm sorry.

15 Q. --he wasn't asked about site types;
16 isn't that correct?

17 A. Yes.

18 Q. Would you agree, sir, that there is a
19 difference, if you talk about certain site types that
20 has much more general application than saying on
21 certain sites based on a specific condition I find I
22 may exercise caution? There is a difference?

23 A. Well, it depends on whether this is a
24 generic -- no, I would have to disagree with you there,
25 Mr. Freidin.

1 Q. Okay.

2 A. The characteristics of the site where
3 Mr. Armson said he would be cautious would presumably
4 be found in other sites across the area of the
5 undertaking.

6 Now, whether or not in the -- you know, I
7 realize I am getting into a terminology problem here,
8 but you could obviously aggregate those site
9 characteristics and define a site type based on them.

10 Q. Okay, thank you. Overhead No. 9 of
11 your evidence. We haven't got the slide projector up.
12 I'm not sure whether it was 9 or 10. There was one
13 where you had an area of green and yellow.

14 A. Yes.

15 Q. Which one was that?

16 A. 10.

17 Q. 10. And 10 is entitled what?

18 A. Capacity of soils and bedrock to
19 neutralize acid deposition. Is that the one you are
20 referring to?

21 Q. Yes. I will tell you -- let me just
22 tell you the context which that came up and maybe you
23 can help me. My notes don't indicate which overhead
24 you were talking about.

25 MADAM CHAIR: Which of the three

1 overheads are we talk about?

2 MR. NEARY: The middle one, Madam Chair.

3 MADAM CHAIR: The middle. Thank you.

4 MR. FREIDIN: Q. There was an overhead
5 in relation to pH of Ontario lakes. Which one is that?

6 MR. NEARY: A. That one is the third
7 overhead, overhead 11.

8 Q. And there was an area green and
9 yellow on that?

10 A. Yes.

11 Q. What was the significance of the area
12 green and yellow?

13 A. I will have to recall, but those are
14 areas of extremely acidic lakes.

15 Q. That's where you would have the
16 greatest concer regarding full tree logging?

17 A. No.

18 Q. What was the point of showing those
19 as being the area where there was the greatest acidity
20 of lakes?

21 A. The point of showing them was that
22 acidification associated with logging is not the only
23 acidification going on in the province.

24 There are areas where acid deposition has
25 resulted in areas that are basically depleted already

1 of acid neutralizing substances.

2 Q. Wasn't that the area where you said
3 you would be most concerned about full tree logging
4 because of its potential --

5 A. No, I did not say that.

6 Q. Was there green and yellow on any of
7 the other overheads?

8 A. Yes.

9 Q. I believe I have got the overheads.

10 Q. Let's go back to this after lunch.
11 Would you set up the machine and I will take a look at
12 that and figure out which one we are talking about.

13 A. One was a map of surficial and soil
14 characteristics. The other one was a map based on the
15 pH of about 6,000 lakes that had been synthesized with
16 the GIS.

17 Q. During the lunch break we will take a
18 look at it. You will show it and we will put them up
19 and I will pick out which one it is that is giving rise
20 to our concern.

21 MS. SEABORN: That sounds sensible, Mr.
22 Freidin.

23 MR. FREIDIN: Thank you.

24 Q. You made a comment that there is more
25 acidification if full tree harvest occurs as opposed to

1 conventional?

2 A. Yes.

3 Q. Can you explain to me what that
4 means?

5 MADAM CHAIR: Excuse me. Was the
6 question, there is more potential for acidification?

7 MR. FREIDIN: More acidification occurs
8 if full-tree harvesting occurs in comparison to
9 conventional logging.

10 Q. That was your evidence?

11 MR. NEARY: A. Yes.

12 Q. I just want you to explain to me just
13 what that means. You are talking about acidification
14 of soils, aren't you?

15 A. Yes, and I tried to clarify that
16 acidification of soils does not always result in
17 acidification of waterbodies.

18 Q. Right. But in terms of the soils,
19 explain to me your comment that more acidification
20 occurs if you full tree harvest in comparison to...

21 A. Conventional?

22 Q. Conventional.

23 A. Well, you are removing with the slash
24 and foliage part of the base. Now, a base being the
25 opposite of an acid. The base capital of the site.

1 Q. Okay. When you say that there is
2 more acidification, are you saying that the site -- as
3 a result of harvesting the site acidifies, the soil
4 acidifies as a result of harvesting?

5 A. The actual activity of logging
6 removes the acid neutralizing -- or part of the acid
7 neutralizing capacity of the site. The actual site
8 acidification occurs during forest regrowth.

9 Q. So we agree that --

10 MADAM CHAIR: Excuse me. Could you
11 repeat that, Mr. Neary?

12 MR. NEARY: Madam Chair, when you remove
13 the above-ground material you are removing with the
14 wood and the other fiber calcium and magnesium which
15 are important bases. Base being an opposite of an
16 acid.

17 So that when you do remove that from a
18 site you are removing that ability, that amount of
19 amount of the site to neutralize incoming acids.

20 When the trees regrow, they have a
21 further demand for calcium and magnesium, potassium,
22 sodium, other things, and part of -- one mechanism by
23 which the trees obtain this is by excreting hydrogen
24 ions basically and this is the way they maintain a
25 charge balance. They are buying with hydrogen ions

1 which are acids.

2 Now, that is not the only acidifying
3 process going on in the soil, but it is the one that is
4 relevant, and if you would like probably a better and
5 more complete description of it I can refer you to a
6 number of-exhibits that are in front of you, in
7 particular the two Meliondo reports and the report by
8 Mahandroppa who discuss that mechanism.

9 MR. FREIDIN: Q. I should have asked you
10 this question perhaps with a lengthy explanation. It's
11 not critical for it if you answer the question.

12 After you harvest, as a result of
13 harvesting does pH go up or does pH go down in soil?

14 MR. NEARY: A. In the soil?

15 Q. In the soil.

16 A. It typically goes up.

17 Q. Which means it gets less acidic?

18 A. Yes.

19 Q. Okay.

20 A. Can I elaborate as to why that
21 happens?

22 Q. No, I think it is important whether
23 it does or doesn't, as much as I love this chemical
24 stuff, unless the Board wants to.

25 MADAM CHAIR: Yes, the Board would like

1 to hear very briefly that description.

2 MR. NEARY: Basically there is accelerated
3 decomposition at the forest floor and that typically
4 releases calcium and magnesium in these bases.

5 MADAM CHAIR: How long does that effect
6 last?

7 MR. NEARY: It is variable as is
8 everything else, I'm sorry, Madam Chair. Typically on
9 the order -- in terms of the amount that gets leached
10 out of system it is on the order to two to six years
11 but that is dependent on how fast regrowth is.

12 MR. FREIDIN: Q. It is people like Dr.
13 Methven and Professor Armson who work in the area,
14 understanding those mechanisms and exercising their
15 scientific professional judgment as to whether the
16 amounts which are being available and how they are
17 being exchanged are sufficient or insufficient for tree
18 growth? That is sort of part of what their expertise
19 is all about; is that right?

20 MR. NEARY: A. Yes.

21 Q. Thank you. Can we just move to
22 silvicultural effectiveness.

23 Thank you, Mr. Neary. I will come back
24 on that one question.

25 A. You mean I'm done?

1 Q. You are just about done.

2 MS. SEABORN: You can't go anywhere
3 though, Mr. Neary.

4 MR. FREIDIN: Q. Let's move on to you,
5 Mr. Bax. Mr. Bax, you talked about the desirability of
6 linking silvicultural treatments back to silvicultural
7 grounds rules; is that correct?

8 MR. BAX: A. Yes.

9 Q. You gave evidence about that because
10 you wanted to -- you wanted to do that so you could
11 track what occurred over time on particular land areas
12 and see what happened as a result of your treatments
13 and then as a result improve your ability to develop
14 silvicultural prescriptions?

15 A. That's correct.

16 Q. Now, I want to just as briefly as we
17 can examine what MNR has committed to do along the
18 lines -- in this area, about increasing the ability to
19 do exactly what it is that you talked about.

20 I think what I would like you to do, if
21 you could, is take MNR's terms and conditions which is
22 Exhibit 2032. Do you have those?

23 A. Yes, I do. Sorry, which term and
24 condition?

25 Q. We will start at term and condition

1 20 on page 7.

2 MADAM CHAIR: Terms and condition...

3 MR. FREIDIN: Term and condition 20(a) on
4 page 7 under the heading Silvicultural Ground Rules.

5 Q. I am going to go through these
6 because when I ask you some questions it is important
7 that we are working from the same knowledge base as to
8 what is here.

9 MADAM CHAIR: Mr. Freidin, we are not
10 with you here.

11 MR. FREIDIN: MNR terms and conditions.
12 I hope you are looking at the January 6, '92 version,
13 Madam Chair.

14 MADAM CHAIR: We just have a binder
15 problem. That is totally our confusion.

16 MR. FREIDIN: Exhibit 2032.

17 MS. SEABORN: I have an extra copy of
18 MNR's terms and conditions. I rarely go anywhere
19 without them these days.

20 MADAM CHAIR: We will take yours.
21 Thanks, Ms. Seaborn. Go ahead, Mr. Freidin.

22 MR. FREIDIN: Okay.

23 Q. Mr. Bax, as I said, I am going to ask
24 you some questions after we go through this so I think
25 it is important for you and I and for the Board to sort

1 of listen to the questions with a knowledge of what's
2 already being committed to.

3 So in relation to this record keeping and
4 desire to have linkages, we start off with 20(a):

5 "Each timber management plan shall
6 contain silvicultural ground rules
7 developed for the forest management unit
8 by a registered professional forester."

9 So there is a commitment that we are
10 going to in fact prepare the silvicultural ground rules
11 which is one of the essential ingredients, correct?

12 MR. BAX: A. Yes.

13 Q. If we go to 20(b), it indicates that:

14 "Pending completion of the revisions of
15 MNR silvicultural guides..."

16 By the way you think that is -- all
17 right. In 78(a):

18 "The site types contained in the SGRs for
19 the forest management unit shall be
20 developed using the current silvicultural
21 guides and the relevant forest ecosystem
22 classification system and the best
23 available site information."

24 Do you agree with that as being a
25 reasonable term and condition?

1 A. Yes, I do.

2 Q. In fact, it is incorporating -- it
3 has a direction that foresters begin using FEC for the
4 purposes of these site descriptions where possible?

5 A. That's correct.

6 Q. And that's a good direction, that's a
7 change or direction that you think is positive?

8 A. Yes, I do.

9 Q. In terms of the FEC, if we turn to
10 page 26 of these terms and conditions, and look at term
11 and condition 81. I am jumping back and forth here.

12 MADAM CHAIR: Page 26, Mr. Freidin?

13 MR. FREIDIN: Page 26. Term and
14 condition 81.

15 Q. There we have MNR committing to
16 continuing the development of FEC through a number of
17 initiatives which they indicate there, and I take it
18 that you think that that is a positive development and
19 a term and condition with which you would agree?

20 MR. BAX: A. Yes, I do.

21 MS. SEABORN: Mr. Freidin, MOE hasn't
22 disputed any of these terms and conditions.

23 MR. FREIDIN: I know you haven't. I want
24 to make sure that Mr. Bax and I are aware of what in
25 fact has been committed to so that we can explore

1 whether really there is anything left to do.

2 MS. SEABORN: That's fine.

3 MR. FREIDIN: And to, in fact, make it
4 very clear what difference, if any, remain.

5 Q. So the FEC is going to be completed
6 for the entire area of the undertaking and that's a
7 good thing?

8 MR. BAX: A. Yes.

9 Q. Then if we go back to 21(a) on page
10 8, would you agree that what we have there is another
11 of the important linkages that you are interested in
12 and that is that:

13 "The silvicultural ground rules shall
14 include a description by site type of the
15 items referred to therein."

16 That's the next important ingredient
17 which is necessary for this linkage to occur; is that
18 right?

19 A. If it's linked as indicated in our
20 amended term and condition 21(a) to your general
21 standard site type classification system.

22 Q. Okay. In fact, in that regard I
23 believe that there is a commitment in 20(c) to do
24 exactly that. It says:

25 "Upon completion of the revision of MNR

1 silvicultural guides the general standard
2 site types provided in MNR
3 silvicultural guides shall be used in the
4 development of the silvicultural ground
5 rules. The silvicultural ground
6 rules which are developed for each forest
7 management unit will cross-referenced to
8 the general standard site types provided
9 in the guides."

10 Would you agree that the Ministry quite
11 independent of -- well, prior to your evidence have in
12 fact committed themselves to develop these general
13 standard site types; is that correct?

14 A. That they have committed themselves
15 to developing the general standard site types?

16 Q. Yes.

17 A. That's correct.

18 Q. In fact, they are going to
19 cross-reference those to the appropriate silvicultural
20 guides; is that correct?

21 A. Yes, that's correct.

22 Q. Is that an important commitment in
23 terms of increasing the ability to track?

24 A. For traceability, yes, it is.

25 MADAM CHAIR: Excuse me, Mr. Freidin.

1 Repeat again the source of that commitment. Which
2 amendment were you talking about?

3 MR. FREIDIN: 20(c).

4 MADAM CHAIR: 20(c).

5 MR. FREIDIN: Q. In fact, one of the
6 commitments, one of the agreements which have made
7 between the ministries is in fact -- okay. That will
8 just confuse things.

9 Let's keep going through here and see
10 what other linkages in fact are already in place in the
11 terms and conditions. Let's go to 78(a) which is
12 referred to here in 20(c). It says:

13 "Upon completion of the revision of MNR
14 silvicultural guides described in term
15 and condition 78(a)..."

16 Let's go to 78(a) and see what the
17 Ministry has committed to in order to make clear the
18 linkages. You find that on page No. 25.

19 This is where the issue that you raised,
20 Madam Chair, perhaps is a little bit more explicit. It
21 says:

22 "In accordance with the foregoing
23 procedure all existing silvicultural
24 guides shall be reviewed to ensure that
25 they reflect current scientific knowledge

1 as it applies to Ontario..."

2 ...Do you think that's a good thing, Mr.

3 Bax?

4 MR. BAX: A. Yes, I do.

5 Q. And more importantly for this

6 discussion:

7 "...and they shall be revised to provide

8 descriptions of general standard

9 Site types for use in developing

10 silvicultural groundrules in timber

11 management plans."

12 Now, that's exactly what you want?

13 A. That's correct.

14 Q. "And those revisions shall be

15 completed within three years of this

16 approval..." and I understand there is

17 no objection by the Ministry of the Environment to that

18 time frame; is that correct?

19 A. No, I think with the provision that

20 in our terms and conditions, as indicated in our

21 evidence, what are you going to do in the meantime.

22 There is that lag time. These are all -- some of these

23 developments I believe are still all in the feasibility

24 stage.

25 Q. So the Ministry of Natural Resources

1 has basically committed to do all the things which are
2 necessary to put into place a system where all these
3 linkages will be there and you will have this
4 traceability and the only outstanding concern is what
5 do we do in the interim?

6 A. No. -- There's the interim I think and
7 also how do we relate it to the ground. You haven't
8 addressed that yet.

9 Q. All right. So the interim and how do
10 we relate it to the ground.

11 When you say "how do we relate it to the
12 ground", just explain to me very briefly what that
13 means so I can ask you some questions about it?

14 A. So we can track it from a map
15 location back to the specific location in the ground.

16 Q. Isn't that the subject matter of the
17 agreed term and condition 32(a) and (b), Exhibit 2214,
18 that in fact the Ministry has agreed that it will in
19 fact map site types?

20 A. Yes, that's correct.

21 Q. Okay. So that's in place.

22 Now, let's go -- before I deal with this
23 interim issue, let's go to term and condition No. 80
24 which, again, deals with this subject matter and sort
25 of ties together all of these linkages in some

1 respects. It says:

2 "MNR shall improve its assessment,
3 recording and reporting silvicultural
4 effectiveness related to both natural and
5 artificial renewal methods through the
6 development of programs to address the
7 following subject areas..."

8 Now, the intent as state quited clearly
9 there, "improve the assessment, recording and reporting
10 of silvicultural effectiveness" is exactly what you
11 would want the intent to be?

12 A. That's correct.

13 Q. "...and the following subject areas
14 will be addressed: The maintenance of
15 silvicultural records of prescriptions
16 and their results..."

17 A. Yes.

18 Q. "(b) the enhancement of record
19 keeping methodologies in order to provide
20 for improved tracking of the linkages
21 among silvicultural guides, silvicultural
22 ground rules, project records, free to
23 grow assessments and other conditions,
24 survey records and the forest resource
25 inventory updated."

1 That's exactly what you want, too?

2 A. Yes, that would be helpful.

3 Q. And (c) and (d) including systematic
4 reporting to the general public?

5 A. That's correct. I think --

6 Q. Would it be fair to say that much of
7 that is in response to MOE concerns which were raised
8 during the meetings and discussions which have been
9 ongoing for some time?

10 A. Yes, and I believe, as indicated in
11 my evidence on the traceability chart, we are aware of
12 those developments.

13 I think what the MOE's concern is that a
14 lot of developments have been promised and that some of
15 them are still in the feasibility stage, especially in
16 reference to 80 and 81 as outlined in your reply
17 evidence No. 3 as well. They are just beginning,
18 especially in terms of the long-term study, long-term
19 productivity stages. So that we won't have answers
20 immediately.

21 Some of those studies I believe are in
22 the length of 15 to 20 years. So it will still going
23 to be some time before we get indication as a result of
24 these initiatives that you have undertaken.

25 Q. By the interim period --

1 A. Can I just finish.

2 Q. All right.

3 A. I think the point we want to make
4 too -- and they may well in time provide the
5 effectiveness picture and we have no argument with
6 that. I think I indicated that in my evidence as well,
7 and then we will be able to determine what happened and
8 where it happened I think from the initiatives that you
9 are undertaken.

10 If they can, then the reporting I believe
11 that we've asked for in our term and condition will be
12 well satisfied or it can be done. If they can't, then
13 our terms and conditions still stand and I think that's
14 the intent of this term and condition.

15 Q. But we are talking about a system
16 where you will be able to do the tracking and you
17 agreed that all the essential ingredients are here and
18 the thing that's missing is the -- the interim period
19 really is the time period between the approval and the
20 time that the silvicultural guides are amended and the
21 standard site types are identified; isn't that right?

22 A. No, I will go back to the first part
23 of your question which dealt with the fact that you are
24 undertaking these initiatives and the Ministry of the
25 Environment and myself as well agree with these

1 initiatives.

2 It is just our terms and conditions, as
3 we have indicated also in terms of tracking and
4 effectiveness, will stand in place just as well. If
5 you cannot provide that information through the
6 initiatives that you are undertaking, then our terms
7 and conditions are still valid.

8 Q. But the tracking and the linkage that
9 you are talking about will be established once the
10 standard site types are in fact identified in the
11 silvicultural guides and then used in the preparation
12 of silvicultural ground rules and site types --
13 standard site types at that time get mapped.

14 You have got the linkages when that
15 happens; isn't that right?

16 A. Then our terms and conditions -- you
17 will be able to meet those terms and conditions and it
18 will be easy.

19 Q. But that is what's going to happen
20 for -- what you want to happen? I mean, that's what
21 you want to happen, right?

22 A. That's correct.

23 Q. And the time period within which that
24 will happen if the terms and conditions of the Ministry
25 are accepted is three years after approval; is that

1 right?

2 A. Yes.

3 Q. So the interim period that we are
4 concerned about is the three years after approval?

5 A. Well, that's another question. You
6 are talking about the interim period now?

7 Q. Yes, the interim period is three
8 years.

9 A. Okay.

10 Q. Is that right?

11 A. Yes, it is, from approval.

12 Q. Okay. Now, do you agree that the
13 need to have a change in the record keeping system in
14 the interim period -- putting it another a way.

15 The urgency for actually having a new and
16 interim system, something different from what you have
17 got now, should be influenced by whether there is a
18 record system in place at the present time?

19 A. I'm not sure what you mean.

20 Q. There is a record system in place at
21 the present time for recording what happens on
22 silvicultural projects; is that correct?

23 A. Within the project records you mean
24 in the field office?

25 Q. Yes.

1 A. Yes, there is.

2 Q. In fact, I think you indicated that
3 on the FMA reviews that you have done, although there
4 wasn't anything right in the TMP that described all the
5 results of all the projects, you were able to go to the
6 project records and glean whether in fact the
7 operation -- what happened on particular land areas
8 over time based on certain treatments?

9 A. When I did FMA reviews, that's
10 correct. I believe it's the concern of my client more
11 in terms of what's available to the public in terms of
12 that traceability.

13 Q. All right. So in terms of
14 silvicultural effectiveness from the manager's point of
15 view, that information can be gleaned from the project
16 records; is that correct?

17 A. Yes, but it is not available in the
18 timber management planning.

19 Q. And for the public it is not there --
20 you have indicated that it is not there in a fashion
21 that you would want. Would you agree that --

22 A. I think the difficulty too,
23 especially as you move from timber management plan with
24 those existing records, is there is a tremendous amount
25 of variability. Some use your system, some don't, some

1 have their own. So that consistency is lacking as
2 well.

3 Q. Right. And the purpose -- would you
4 agree that one of the purposes of -- the Ministry in
5 fact is in the midst of developing a silvicultural
6 effectiveness monitoring system at the present time?

7 A. Yes.

8 Q. That, in fact, it is going to result
9 in the identification -- we are going to have standard
10 site types identified within three years of approval;
11 is that correct?

12 A. Yes, that's correct.

13 Q. Let's just go then and find out what
14 in fact is being done in relation to the development of
15 that silvicultural effectiveness monitoring system.

16 We have gone through that and we are
17 going to do that because I want to sort of discuss with
18 you whether in fact it makes sense to in fact come up
19 with a new system of recording or reporting to the
20 public that in fact this work is ongoing in relation to
21 STEMS, okay?

22 A. Well, if I understand you correctly,
23 my evidence indicated we have no problem with what
24 you're developing and that you will be able to meet our
25 term and condition with all the initiatives that you

1 have undertaken. So I think we are in agreement on
2 that.

3 Q. Could you turn to page 11 of the
4 witness statement, Tab 2. Is what you are talking
5 about which you have referred to here as paragraph 1(m)
6 in Appendix 8 which is the Report of Past Forest
7 Operations?

8 A. What is the question, I'm sorry?

9 Q. You say here you want a statement of
10 silvicultural effectiveness by general standard site
11 types, working groups and silvicultural package.

12 Is that what you are saying you want in
13 the interim?

14 A. Yes.

15 Q. Because you say on the next line --

16 A. "Until the site types are
17 standardized it will be crucial to
18 maintain the stand listings."

19 Q. All right.

20 A. But I believe we see 1(a) and (b)
21 more as an interim because once the GSSTs are developed
22 then you don't have to show the silvicultural package,
23 but in that general summary -- and in the reviews that
24 I have seen or the timber management plans that I have
25 gone through, most of the foresters have a summary as

1 we've indicated here in 1(m). So I don't believe that
2 is interim.

3 Q. All right. But (m) is, in fact,
4 requiring a certain way to display silvicultural
5 effectiveness in the Report of Past Forest Operations,
6 correct?

7 A. That's correct.

8 Q. And that's directed to your concern
9 the public be advised of the silvicultural
10 effectiveness in the timber management plan?

11 A. That's correct.

12 Q. Now, there are different ways of
13 reporting silvicultural effectiveness than by doing it
14 just by aggregating what happens on the units by
15 general standard site type, working group and
16 silvicultural package?

17 A. That's correct.

18 Q. In fact, there was a discussion
19 between you and Madam Chair where she suggested that
20 perhaps if you are reporting to the public that you
21 might want to say in this -- like in the mixedwood
22 forest group we are having limited success and we think
23 it is basically because of that or we are having great
24 success in dealing with the spruce working group for
25 another reason.

1 So that would be reporting to the public
2 silvicultural effectiveness in a way different than
3 just aggregating up more technical results based on
4 general standard site types, working groups and
5 silvicultural packages, correct?

6 A. Yes, if I understand your question
7 correctly. The concern of my client, if I understand
8 it correctly, is not in the silvicultural effectiveness
9 report -- is in silvicultural effectiveness reporting
10 simply by free to grow. That is only one indication.

11 As indicated in my evidence, the really
12 true measure of effectiveness is over that rotation.
13 Our concern is the focus of the Ministry of Natural
14 Resources also has been on the establishment phase
15 which is the free to grow.

16 Q. But do you agree that the STEMS
17 program is likely to develop or consider and develop
18 means by which you could put data into the system and
19 manipulate it so that you could use the information to
20 convey silvicultural effectiveness to the public?

21 A. Yes, and that's why I believe our
22 term and condition can be met.

23 Q. It may not be -- as a result of the
24 STEMS effort, it may very well be that when those
25 experts working on that system, they may decide that

1 there is in fact a better way of manipulating the data
2 and reporting to the public than the manner that you
3 have suggested in item (m); i.e., a statement of
4 silvicultural effectiveness by general standard site
5 types, working group and silvicultural package.

6 Is that not a likely result of the STEMS
7 program?

8 A. I don't know if I would characterize
9 it as a likely result. We've taken your initiative or
10 your client's initiative utilizing general standard
11 site types and feel that was the initiatives under
12 STEMS as well as some of other programs that you are
13 taking. So I think it's fair to say you will be able
14 do it and quite easily.

15 Q. See, the concern really is this. We
16 have heard evidence -- if you are going to start
17 changing reporting systems, putting into place a
18 different process, it takes time to get the messages
19 out to the field; is that right?

20 A. That's correct.

21 Q. It takes time to perhaps train the
22 field as to how they are supposed to in fact implement
23 the new process, right?

24 A. Yes.

25 Q. And sometimes you have to sort of

1 work out the bugs? They are little problems and you
2 have to start adjusting it to make it better; is that
3 right?

4 A. Yes, that's correct.

5 Q. And I guess the concern is that if
6 your term and condition becomes effective it says -- it
7 speaks of the day of the approval and it says: There
8 is the system, change it and change it and do it that
9 way. That's what it says.

10 The Ministry of Natural Resources is
11 going to have to go out there and go through what I
12 said, come up with the process, deliver it to the
13 field, train the people, work out the bugs, modify it
14 where necessary and it seems to me that if, in fact,
15 the STEMS program - which I want to review with you in
16 a minute - is going to come up with a different way of
17 doing it, a more efficient way of doing it based on all
18 the work that they are doing, it makes sense to -- it
19 seems to me that in the interim that we shouldn't
20 change the system.

21 In the interim we have got silvicultural
22 effectiveness in terms of what's really happening on
23 the ground through your project records and it is best
24 to wait until we can put together a program or an
25 approach which is going to be the one which is going to

1 be used and then we can iron out the bugs and make sure
2 people are trained about something that's going to be
3 used in the long-term. That is something that is only
4 going to be used for a three-year period.

5 That's a long convoluted statement, but
6 do you understand what I am getting at?

7 A. I think so, but I guess what puzzles
8 me is we paid careful attention and went through the
9 initiatives that you are taking.

10 Now, I'm not an expert on all the
11 initiatives your Ministry is taking, but I thought and
12 I believe my client agreed is that by using your
13 initiative under the general standard site type, then
14 our conditions as outlined are easily met because that
15 is your own initiative.

16 MR. MARTEL: But how long is it going to
17 take?

18 MR. BAX: Until the three-year period.

19 MR. MARTEL: Okay. Mr. Freidin is asking
20 you is why if it going to take three years to develop
21 that, it is their proposal, why should you change all
22 the reporting process which will take time for the sake
23 of three years?

24 MR. BAX: I don't think we are asking
25 them to change anything different other than those two

1 interims. One which was the stand listings and the
2 stand listings are already done. That was an interim
3 measure that the ministry has asked for until the MNR
4 goes to GSSts or general standard site types and both,
5 from our understanding, are -- the one in the interim
6 is already done and the second one is one they are
7 moving to.

8 MR. FREIDIN: Q. But, Mr. Bax, you see
9 this statement (m), it says -- you are saying it kicks
10 in at three years once you have got the standard site
11 type, right?

12 MR. BAX: A. Yes.

13 Q. But what you are saying here is that
14 the way silvicultural effectiveness should be reported
15 to the public in the Report of Past Forest Operations
16 is by putting in a statement of that effectiveness by
17 general standard site types, working group and
18 silvicultural package.

19 What I'm saying is that the software and
20 all the work that's being done on STEMS you will be
21 able to sit back and say: How can I manipulate this
22 data and come up with perhaps more meaningful ways of
23 transmitting information to the public than by doing it
24 by general standard site type, working group and
25 silvicultural package which seems perhaps to be fairly

1 technical when you are talking to the public.

2 A. Well, two things. If I understand
3 you correctly, and correct me if I am wrong, but
4 that -- and we are talking about the interim period; is
5 that correct?

6 Q. Well, all right.

7 MADAM CHAIR: Excuse me. The Report of
8 Past Forest Operations for which this -- under this
9 condition would apply, it is being suggested that that
10 would be three years after approval unless the Ministry
11 of the Environment is suggesting that the Report of
12 Past Forest Operations be done immediately on approval
13 which wouldn't be possible.

14 MR. BAX: I believe it is my
15 understanding from my client is that the stand listings
16 will be used for that traceability until the GSSTs
17 are --

18 MADAM CHAIR: But not with respect to the
19 Report of Past Forest Operations because if we were to
20 accept the proposals of the Ministry of Natural
21 Resources we wouldn't have a new kind of Report of Past
22 Forest Operations until some schedule after approval.

23 MR. SEABORN: Madam Chair, if it is the
24 Ministry's position that on the same day that the
25 general standard site types are going to be ready in

1 three years that STEMS is also going to be up and
2 running so that we can have a statement of
3 silvicultural effectiveness in the plan rather than
4 through the project records three years from now, then
5 I will go back and discuss that with Mr. Bax when the
6 evidence is over and that could very well solve this
7 whole problem in terms of the terms and conditions.

8 It is not my understanding though that
9 MNR's STEMS program and their initiatives in respect of
10 silvicultural effectiveness are going to be up and
11 running within three years which is the date when the
12 general standard site types will be ready.

13 It is not my understanding that three
14 years has any relation to the reporting in the timber
15 management plan of a statement of silvicultural
16 effectiveness.

17 If Mr. Freidin can clarify that for me we
18 could save a lot of time on this issue.

19 MR. FREIDIN: I am having enough
20 difficulty asking questions and I can't.

21 MADAM CHAIR: Well, I think what the
22 Board is going to need because now we are getting
23 confused on the schedule and what's being asked for, is
24 we are going to need some clarification.

25 We are going to have lunch now. Maybe

1 Mr. Bax could think over some of the questions and
2 clarify for the Board with respect to two proposals
3 that the Ministry is making and that is that stand
4 listings be available in the TMP, and I think so as not
5 to confuse the Board if we don't look at the Report of
6 Past Forest Operations connection right now.

7 If we look at the information that you
8 want to see available in the timber management plan
9 that's a little easier for us to sort out.

10 Stand listings showing the silvicultural
11 package implemented, which is one of your proposals,
12 and the second is some statement of silvicultural
13 effectiveness by the site type, working group and
14 silvicultural package.

15 Please tell the the Board, Mr. Bax,
16 whether these data, whether it is your client's
17 position that these data should show up in the timber
18 management plan now, that MNR should voluntarily start
19 to present this data to the public or it should become
20 available immediately upon approval of the application
21 or not for some number of years after the application
22 were approved if it is.

23 The Board is getting confused about what
24 you want to see, where and when it would become
25 applicable if the application were approved.

1 MR. BAX: Okay.

2 MADAM CHAIR: That would help us I think
3 when we get back from lunch.

4 Ms. Seaborn, after you hear Mr. Bax's
5 clarification if you feel there will be something to
6 add by way of maybe a discussion you and Mr. Freidin
7 could have over lunch or some direction from your
8 client, then the Board would appreciate that as well.

9 MS. SEABORN: Very well. Thank you.

10 MADAM CHAIR: Shall we have lunch?

11 MR. FREIDIN: Yes.

12 MADAM CHAIR: You're ready for lunch, Mr.
13 Freidin?

14 MR. FREIDIN: I am wondering if we should
15 break for a little shorter than an hour and a half, if
16 that's possible.

17 MADAM CHAIR: 1:00 or 1:15, Mr. Freidin?

18 MR. FREIDIN: 1:15.

19 MADAM CHAIR: All right. We will be back
20 at 1:15.

21 ---Luncheon recess at 12:05 p.m.

22 ---On resuming at 1:20 p.m.

23 MADAM CHAIR: Please be seated.

24 MR. FREIDIN: Madam Chair, I hope Mr.
25 Pascoe conveyed to you my estimates for the rest of the

1 day.

2 MADAM CHAIR: Yes, Mr. Freidin.

3 I have a request. Could I get the
4 cooperation of the parties so that we could complete
5 today at 3:15 and finish off in the morning. Is that
6 going to be...

7 MR. FREIDIN: Maybe we will finish off at
8 3:15. I am willing to come back tomorrow and finish
9 off.

10 MADAM CHAIR: I don't like to put the
11 witnesses to any trouble, but I would appreciate it if
12 we could finish at 3:15 today.

13 MS. SEABORN: If it is all right with the
14 court reporter, if we could keep going right through to
15 3:15 and try and finish I think it would make things
16 easier for the witnesses. We will just have to see
17 where we go.

18 MADAM CHAIR: All right. Let's try for
19 that then.

20 MR. FREIDIN: Q. Okay, Mr. Bax, we can
21 start with the issues raised by the Chair.

22 MR. BAX: A. If we could go to my
23 statement of evidence, Exhibit 2200, behind Tab 2, page
24 11, which again deals with the Appendix 8, Report of
25 Past Forest Operations.

1 I think it would be helpful also if we
2 could take out my overhead No. 5 which is Exhibit 2207
3 which is the traceability chart. If I could go through
4 then just 1(a), (b) and (m) back to the Report of Past
5 Forest Operations.

6 First of all, the Report of Past Forest
7 Operations is part of the timber management planning
8 reporting requirement, so it is in there and it is the
9 way the public is provided with the information that
10 occurs on the forest management unit.

11 1(a) simply indicates that stand listings
12 and silvicultural packages are required until the
13 general standard site types are available. So we view
14 that as an interim measure.

15 Now, 1(b), we feel it is important to
16 tract effectiveness in free to grow reporting by more
17 than just treated and untreated which is how it is
18 currently done in the timber management plan.
19 Therefore, we have proposed that stand listings should
20 be used in the interim until the general standard site
21 types are available.

22 Finally, 1(m) will kick in when the
23 general stand types are available and be implementable.
24 We require a statement of general effectiveness by
25 these general standard site types because that provides

1 the traceability.

2 It is the position -- our position and
3 that's shown again on the traceability chart, that it
4 is the general standard site types that provide the
5 link and that we require that and we require or we feel
6 it is necessary that the Board in their ruling specify
7 that general standard site types be utilized to provide
8 traceability.

9 We have reached agreement with the Crown
10 I believe and the parties under term and condition
11 32(a) then to link our maps which is the ground link
12 through general standard site type, and if we do that
13 also in the Report of Past Forest Operations and other
14 areas where effectiveness is reported it will be
15 possible to have that traceability that we're seeking.

16 Referring to the STEMS initiatives and
17 the various other things that the Ministry is carrying
18 on to improve their ability to do that, they may come
19 up with additional ways or different ways to provide
20 that information, but we feel it's necessary that the
21 general standard site types provide that link. We have
22 agreed to it about 70 per cent of the way. We are
23 asking just the final 30 per cent which is in the
24 reports.

25 MADAM CHAIR: Mr. Bax, in Appendix A,

1 l(m), did I hear you say that this condition -- you are
2 not asking for this until general site types become
3 available?

4 MR. BAX: Well, we could not do it as it
5 is indicated right now by general standard site type,
6 that's correct, because we don't have them.

7 MADAM CHAIR: And l(b) again the same
8 situation, that that can't be done today or it must
9 wait for the system of standardized site types to be
10 developed?

11 MR. BAX: We require l(b) in the interim
12 because it provides the link through silvicultural
13 packages to the ground through l(a).

14 The only track we have right now is the
15 stand listings. If I want to -- that example from
16 Hearst, that gentleman that asked the question on the
17 small stream. I couldn't determine what package was
18 going to be implemented nor was it indicated to anybody
19 what package.

20 So the only way right now we can do that
21 is through the stand listings and then it is necessary
22 to know how they are going to harvest the site and
23 renew it.

24 So I need that link back to the ground
25 and the only link we have right now with the current

1 information that's available is the silvicultural
2 package.

3 MR. FREIDIN: Q. Just for clarification,
4 are you suggesting it would be that (b) then should
5 really -- because the general standard site type won't
6 be developed for, say, three years after approval, that
7 (b) to be consistent and possible would have to say by
8 site type, that silvicultural package?

9 There won't be -- for the interim, to be
10 a site by site type?

11 MR. BAX: A. The concern there is, Mr.
12 Freidin, we can't link it to the ground. The free to
13 grow reporting, you are simply reporting by treated or
14 untreated and the only link we have is by the
15 silvicultural package.

16 Q. I am not saying that the Ministry --
17 what I am trying to do is just make this workable
18 assuming the Board accepted it. I am not saying I am
19 accepting it.

20 You don't have any general standard site
21 types and you won't them until, say, three years after
22 approval?

23 A. That's correct.

24 Q. The Ministry has said they are going
25 to map in the agreement on 32(a) site types.

1 A. Yes.

2 Q. You want to be able to link the site
3 types to the silvicultural ground rules, right, on the
4 map?

5 A. Yes.

6 Q. So in the interim, at best all you
7 can do is map the site type and try to link that back
8 to the silvicultural ground rule site type, that's
9 right?

10 A. The difficulty we have is there is
11 such a wide variety of site types used.

12 Q. But we can't standardize it until--

13 A. Until you get it.

14 Q. --three years later. So how can you
15 have in the interim a process which requires you to do
16 something which won't occur until the end of the
17 interim period?

18 A. That's why we've included
19 silvicultural package. You can do it by silvicultural
20 package right now.

21 Q. Only? I was reading "and" as being
22 conjunctive not disjunctive.

23 A. The silvicultural package is the
24 information that links it to the ground through your
25 stand listings and that's what we require as an interim

1 until you develop your GSSTs.

2 Q. I'm confused.

3 MADAM CHAIR: I'm confused as well, Mr.
4 Bax. To me (b) and (m) require the same type of
5 general standard site type information. I don't see
6 any difference and if you can't do (m) until that
7 system is developed, how can you do (b)?

8 MR. NEARY: May I try and clarify at the
9 risk of muddying the waters.

10 If (b) can't be done by general standard
11 site type, but if you list free to grow by
12 silvicultural package, then under 1(a)(7) you've got
13 the linking from stand listing to silvicultural package
14 so you can take it down to the ground.

15 MR. MARTEL: Give me an example. Give us
16 an example of what you are saying. I really am...

17 MR. BAX: I think the confusion comes
18 from the fact that we won't have general standard site
19 types until three years now.

20 MADAM CHAIR: Right.

21 MR. BAX: To me, obviously we can't do
22 even in the interim 1(b) because you don't have general
23 standard site type except by silvicultural package.

24 MR. FREIDIN: Q. I think Mr. Martel is
25 saying show us how you would do that by silvicultural

1 package.

2 MR. BAX: A. So in this example from
3 Hearst, the gentleman -- the river is going through and
4 the area alongside it was going to be harvested. He
5 had identified a stretch of the river that was
6 vulnerable or he felt was vulnerable to the cutting
7 practices that were used.

8 When he asked that we wouldn't go to the
9 map and determine from the stand types -- they had the
10 reserve there as well and he indicated that 30 metres
11 was insufficient.

12 We couldn't tell from the FRI stand
13 listings, No. 1 and No. 2, let's say, what type of
14 package in terms of harvest and renewal was going to be
15 undertaken along that stretch of the river.

16 If we could have, if the forester could
17 have said: Well, this is how we are going to harvest
18 it and renew it and because of that information, you
19 know, your concern in terms of the warming up of these
20 small streams we feel will be addressed.

21 MADAM CHAIR: The forester who made these
22 prescriptions didn't know what they were?

23 MR. BAX: The forester that made -- it
24 was the FMA area and the forester that was responsible
25 for it wasn't there. The Crown forester was there, but

1 not the individual forester for the --

2 MADAM CHAIR: The company?

3 MR. BAX: The company forester, that's
4 correct.

5 MADAM CHAIR: So the company forester.
6 The company forester couldn't tell them the preferred
7 or the selection of harvest --

8 MR. BAX: That's correct, from the
9 information shown on the map.

10 So what we're asking right now -- the
11 only link we have is showing the stand listings then,
12 the table, the package, because then we could have gone
13 to a listing and said: Well, this is stand 1 and 2 and
14 here is the package, package 1 and 2 are going to be
15 implemented and your concern would be addressed.

16 So that's why we need that. It's not the
17 best way, there is no argument there, but that's the
18 only way right now we have of traceability.

19 MADAM CHAIR: The only way you have
20 traceability is the fact that the forester who made the
21 prescriptions--

22 MR. BAX: If he is there.

23 MADAM CHAIR: --knows which prescriptions
24 are applied to each area.

25 MR. BAX: Yes, but then again, even then

1 for us coming in from the outside, he knows it but he
2 is not always there or she is not always there. That's
3 the problem. That's what we're asking in the interim.

4 MR. FREIDIN: Q. Right. The problem I
5 have is doing it by stand. The agreement which has
6 been reached and indicated in 32(a) says: Lookit, we
7 agreed we will map by site type, okay, and we will have
8 our silvicultural ground rules by site type, right?

9 A. (nodding affirmatively)

10 Q. So if we map by site type, if
11 somebody goes and says what are you going to do in this
12 area and it happens to be in site type 1, we have done
13 the silvicultural ground rules by site type, you should
14 be able to say: Well, here is what they are going to
15 do in that area; isn't that right?

16 A. Absolutely.

17 Q. Now, site types and stands are not
18 the same thing.

19 A. No.

20 Q. Right, they are not the same thing.

21 So if, in fact, you want to be able to
22 tell people what might happen in their area as best you
23 can that will be accomplished just by implementing
24 32(a) which is site types, not stands, and prepare your
25 silvicultural ground rules by site type?

1 A. (nodding affirmatively).

2 Q. That's right. Now, the other part of
3 this whole discussion of stand listings and site types
4 and everything is, how do you go about becoming more
5 effective in terms of your silviculture, right?

6 A. Yes.

7 Q. The thing that we just talked about
8 about site types, that is sort of predicting and
9 telling the public what might happen?

10 A. Right.

11 Q. The other aspect of all this is how
12 are you going to be able to track this so you can
13 improve your silviculture?

14 A. Right.

15 Q. For that purpose you want to have
16 some connection between what happens on the ground--

17 A. Yes.

18 Q. --and your silvicultural ground
19 rules?

20 A. Yes.

21 Q. Now, do you agree, sir, that at the
22 present time the Ministry of Natural Resources and
23 companies do not record by stand what they have done on
24 the ground, rather they report and record what they
25 have actually done on the ground by project?

1 A. That's correct.

2 Q. And a project can be one stand, a
3 whole number of stands, correct?

4 A. Yes, that's correct.

5 Q. So if you want to have a tracking
6 system which will allow you to improve your ability to
7 say: Here is what I did and here is what happened, you
8 wouldn't want to -- the way it is done now is you would
9 take your project records and want to be able to
10 somehow track that specific piece of geography with the
11 knowledge of what you did on it over time; is that
12 right?

13 A. Yes.

14 Q. Okay.

15 A. Can I make a point? If I understand
16 correctly, when we agreed on 32(a) we were going to do
17 away with the stand listings and it will be shown by
18 site type. This is just an interim until that comes
19 in.

20 Q. But --

21 A. There is nothing -- like, in this
22 example, I couldn't go and he couldn't either. Once we
23 have that traceability by site type there is no
24 argument we don't need the stand listings anymore.

25 Q. All right. But that agreement is

1 going to come into effect -- we have come to the
2 agreement, and let's assume that's implemented the day
3 we get approval, if not before, you are still got a
4 requirement here then for the Report of Past Forest
5 Operations in 1(a)(7) to show standard listings showing
6 the silvicultural package implemented.

7 Now, you have told me that as long as you
8 do that by site type the problem is solved and if, in
9 fact, we have got the agreement and we are going to do
10 what the agreement says then you can withdraw 1(a)(7)
11 because you don't need it anymore.

12 A. Once you have that done, that's
13 correct. It's an interim measure.

14 MADAM CHAIR: Just a question, Mr. Bax.
15 If you had had the site type, and this example on the
16 Trout River...

17 MR. BAX: It is a river with trout in the
18 Hearst Forest management unit.

19 MADAM CHAIR: In this example if you had
20 had that stands 1 and 2 were site type "x", how would
21 have you been able to explain to the person asking
22 the -- a member of the public what would happen?

23 MR. BAX: I would have gone to the ground
24 rule and been able to see the preferred silvicultural
25 package associated with that general standard site

1 type.

2 MADAM CHAIR: And that would only tell
3 that person what was planned for there?

4 MR. BAX: That's correct.

5 MADAM CHAIR: Would have given the
6 preferred option and there might be some changes in
7 which case one or two other things might have happened
8 instead?

9 MR. BAX: That's right. They are listed
10 as alternatives in the ground rules or they would be
11 listed as alternatives.

12 MADAM CHAIR: Do you think that's a
13 better system than knowing exactly what's planned for
14 the stand?

15 MR. BAX: Yes, yes. I agree with that.

16 MR. FREIDIN: Q. If there is something
17 else that you need to say to complete the --

18 MR. BAX: No, I think...

19 Q. Okay.

20 Could I just have one moment, Madam
21 Chair, please.

22 MADAM CHAIR: Mr. Bax, just another
23 question. Are the stand listings available in...

24 MR. BAX: In the TMP?

25 MADAM CHAIR: Yes.

1 MR. BAX: Yes. most of them. Pardon me,
2 I shouldn't say -- some of the ones that I have seen
3 they are available and some they are not.

4 Generally at these open houses they do
5 have them available. I haven't always seen them in the
6 timber management plans that I have reviewed.

7 MADAM CHAIR: And the problem in this
8 case was you had a list of stand listings but you
9 didn't know how to put it on those areas, you didn't
10 know which number or which stands those were?

11 MR. BAX: I didn't know what package they
12 were going to implement. We had the stand.

13 MADAM CHAIR: All right.

14 MR. BAX: That wasn't a problem.

15 MR. FREIDIN: Q. But once the agreement
16 in Exhibit 2214 is implemented you would be able to
17 provide that type of information?

18 MR. BAX: A. That's right. If that site
19 information is on the map, then we have the
20 traceability that we're after.

21 Q. In the situation which arose in the
22 Hearst example, was that gentleman coming in before the
23 timber management plan was implemented or was it after
24 the plan?

25 A. In the area of concern?

1 Q. In this particular example that you
2 have talked about.

3 A. Yes. That already happened, yes.

4 Q. Thank you. Zipping along until 3:15.
5 If I could just have one moment.

6 Could you turn to page 13 of your
7 particular witness statement, Mr. Bax.

8 MR. BAX: A. Page 13?

9 Q. Yes.

10 A. Yes.

11 MADAM CHAIR: Which page are we on, Mr.
12 Freidin?

13 MR. FREIDIN: Page 13.

14 MADAM CHAIR: Thank you.

15 Q. Do you have the Illing Report,
16 Exhibit 2031?

17 MR. BAX: A. No, I don't.

18 MS. DAHL: (handed)

19 MR. BAX: Okay.

20 MR. FREIDIN: Q. Would you turn to --
21 have you got tabs on your Illing Report?

22 MR. BAX: A. Yes, I do.

23 Q. Would you turn to tab No. 5.

24 A. Okay.

25 Q. Which is head Context of Timber

1 Management Plan.

2 A. Yes.

3 MADAM CHAIR: That's No. 6?

4 MR. FREIDIN: No. 6, Contents of Timber
5 Management plan.

6 MR. BAX: Yes.

7 MR. FREIDIN: Q. Okay. So we have those
8 two open in front of us. I take it by looking at the
9 type setting on this page, if we look at 2(a):

10 "Silvicultural ground rules shall include
11 a description by site type of..."

12 MR. BAX: A. Yes.

13 Q. That was a term and condition which
14 was agreed to by the parties with the proviso that
15 parties may propose additions?

16 A. That's correct.

17 Q. Let's look at -- if you look at item
18 No. 1, it says you should have -- it refers to showing
19 acceptable alternative silvicultural treatments in the
20 last line of 2(a)(1).

21 A. Yes.

22 Q. Now, that agreement has not been
23 reflected in your term and condition because if we look
24 at 21(a) on your page 13, 21(a)(1), you have changed
25 the word silvicultural treatments to silvicultural

1 packages; is that correct?

2 A. That's correct.

3 Q. All right. So we have agreed that
4 the agreement which was reached through negotiations
5 has not been reflected in your terms and conditions and
6 you have made a change.

7 Leaving aside whether that an acceptable
8 procedure, can you tell me why you made the change?

9 A. The intent in this term and condition
10 was to detail or to specify the preferred silvicultural
11 packages and alternatives.

12 Q. Do you agree that there is a
13 difference between -- you obviously are making a
14 distinction between alternative silvicultural packages
15 which you have put in there and alternative
16 silvicultural treatments; is that correct?

17 A. I think right at the beginning I have
18 made that point under Introduction.

19 Q. We are looking where, sir?

20 A. In my same statement of evidence,
21 Exhibit 2200.

22 Q. Yes. Where do we look to see that?

23 A. If we start at the second paragraph
24 and the third:

25 "These components are grouped together

1 into preferred silvicultural treatments
2 referred to as prescriptions or
3 silvicultural packages."

4 MADAM CHAIR: Which page are we on, Mr.
5 Bax?

6 MR. BAX: My introduction in my statement
7 of evidence.

8 MADAM CHAIR: Yes. Your third paragraph?

9 MR. BAX: Third paragraph. I have
10 indicated that:

11 "These components are grouped together
12 into preferred silvicultural treatments
13 referred to as prescriptions or
14 silvicultural packages."

15 MR. FREIDIN: Q. Now, Mr. Bax, are you
16 telling me -- well, you agreed with me that there is a
17 difference between silvicultural treatments and
18 silvicultural packages?

19 MR. BAX: A. I think what I've said here
20 in my introduction and what I've just read is we have
21 considered them when they're grouped together into
22 preferred silvicultural treatments you can call them
23 prescriptions or packages, they are one in the same
24 thing.

25 Throughout my statement of evidence I

1 have treated a package similar to a prescription,
2 similar a treatment.

3 Q. Well, Mr. Bax, I would suggest to you
4 that that's inconsistent with the agreement which was
5 reached during the negotiations because if we go back
6 to the Illing Report, 2(a)(1), there was a clear
7 distinction made in that because it said:

8 "The preferred silvicultural treatment
9 package (i.e. silvicultural system..."
10 et cetera,

11 "...and acceptable alternative
12 silvicultural treatments."

13 I suggest that to you that there was a
14 distinction between those two. Those are two different
15 things otherwise he would have used the same words?

16 A. In my evidence and as I've indicated
17 here in this term and condition as well as in the
18 introduction we consider them the same in my evidence.

19 Q. Okay. You consider them the same in
20 your evidence. So can we change the first to say the
21 the preferred silvicultural treatments and drop the
22 word package?

23 A. I think that's up to you. As I've
24 referred to it in my evidence I've referred to them as
25 packages and as they're listed in the ground rules

1 they're referred to as packages.

2 Q. So if we go back to 21(a) on page 13
3 of your evidence, can we change alternative
4 silvicultural packages at the end where it says
5 "acceptable alternative silvicultural packages" and
6 make it read acceptable alternative silvicultural
7 treatments?

8 A. I think if you did it all the way
9 through the evidence, as I have treated them, I have
10 called them prescriptions, packages or treatments, yes.

11 Q. Okay. Thank you.

12 MS. SEABORN: Mr. Freidin, obviously the
13 word packages at the end of 21(a)(1) should have been
14 underlined in our terms and conditions to show that it
15 was a change and that was an error.

16 MR. FREIDIN: But based on the agreement
17 it can't be changed. You can add things, but you change
18 it. That's my concern. We are suggesting by making
19 the change you have changed the intent.

20 MS. SEABORN: Well, we could have a long
21 discussion as we did with some other parties about what
22 constitutes a change and what constitutes an addition.

23 We looked upon the use of packages as an
24 addition to the agreed upon term and condition in the
25 Illing Report.

1 MR. FREIDIN: Q. So there was something
2 unclear about the word treatments in your view even
3 though we reached an agreement as to the wording? Is
4 that right, Mr. Bax?

5 MR. BAX: A. I will go back to what I
6 have indicated in my evidence.

7 Q. Okay. Can you turn please to page 12
8 of the witness statement, your witness statement, Mr.
9 Bax.

10 A. Yes.

11 Q. It is there that we find term and
12 condition 64(a).

13 A. Yes.

14 Q. And that term and condition except
15 for the underlined portion is what the Ministry
16 recommended; is that correct?

17 A. That's correct.

18 Q. And what happened here is the
19 Ministry was putting in that term and condition to deal
20 with the issue of monitoring and compliance, the items
21 referred to, and the Ministry of the Environment has
22 said that it can also be monitoring in relation to the
23 effects and effectiveness of the various timber
24 management activities; is that correct?

25 A. That's correct.

1 Q. Can you tell me what the distinction
2 is between effects of the activities and the
3 effectiveness of the activities?

4 A. I believe effectiveness refers more
5 to the response to the various activities in terms --
6 if you go back to my definition of silvicultural
7 effectiveness, which is on my first overhead, we have
8 defined silvicultural effectiveness as being a
9 possible -- or being defined as achieving the desired
10 objective, the management objective, at the lowest cost
11 based on sound environmental practices.

12 Q. That's a definition of silvicultural
13 effectiveness as I read the term and condition as you
14 have amended it--

15 A. That's correct.

16 Q. --that effectiveness of those
17 activities -- are you telling me that effectiveness of
18 those activities is only a reference to silvicultural
19 effectiveness?

20 A. Under this term and condition?

21 Q. Yes.

22 A. I believe again -- I have to see your
23 wording.

24 Q. Well, all right.

25 A. Draft terms and conditions.

1 Q. Just delete the underlined words and
2 you have got what we have recommended. My question
3 is --

4 A. What is your question again?

5 Q. My question is, is the effectiveness
6 that you are referring here to; in other words, the
7 monitoring for the purpose of effectiveness of access,
8 harvest, renewal and maintenance to look at those
9 activities and monitor the effectiveness of those in
10 relation to silvicultural only?

11 MR. NEARY: A. I can perhaps respond to
12 that. The answer is no.

13 Q. All right. So are we to interpret it
14 then that it is to in fact record and monitor the
15 effectiveness of all four activities in relation to
16 silviculture and other things?

17 A. Yes.

18 Q. Can you explain what those other
19 things are? First of all, what those other things are
20 that you would be monitoring?

21 By way of an example tell me how would
22 you sort of report on and describe the effectiveness of
23 access, the effectiveness of harvest, the effectiveness
24 of renewal and the effectiveness of maintenance in
25 terms of things other than silviculture?

1 A. If you built a road across a river
2 and you were using the guidelines for water crossing
3 and access roads and you applied those guidelines and
4 there was a deleterious effect that would be recorded.

5 Q. But that, sir --

6 A. Duly noted.

7 Q. That would, in fact, be something
8 that you would maybe record as a result of being in the
9 field and observing an undesirable condition in the
10 vicinity of the operations?

11 A. Yes.

12 Q. Isn't that exactly what in fact the
13 Ministry has committed to do in its terms and
14 conditions 64(b)?

15 So if we look at the Ministry's terms and
16 conditions, Exhibit 2032 at page 21, if you look at
17 64(b) it says that:

18 "When monitoring timber management
19 activities MNR shall record any
20 undesirable conditions which are observed
21 in the areas of operations and which
22 appear to be related to timber management
23 activities."

24 I would suggest to you based on the
25 answer you just gave the Ministry in fact is doing

1 exactly what you are asking them to do that?

2 That, in fact, is by your definition
3 effectiveness monitoring in relation to those four
4 activities?

5 A. No, you are -- in your term and
6 condition 64(b) you are recording undesirable
7 conditions. You are making no assessment of the
8 effectiveness of the guidelines in mitigating those.

9 Q. So you are saying that an assessment
10 be made as to the cause/effect linkages, an assessment,
11 between what you observe in terms of an undesirable
12 condition and the guidelines now?

13 A. I don't see how else you can assess
14 the effectiveness of the guideline.

15 Q. On every FMU?

16 A. This is -- just a minute.

17 MR. BAX: A. It deals with monitoring
18 only, right.

19 Q. Well, I don't --

20 A. When we monitor for compliance, like
21 when we go look at a silviculture activity or an access
22 road, there is more that we look for than just
23 undesirable conditions. We also look for desirable
24 -- which one of the effects of those activities.

25 What our concern is when you just say

1 this is what I plan to do and this is what they did and
2 don't look at the results of those actions in terms of
3 the environment, you know, you may have done the most
4 wonderful activity in the world, but different results
5 from that that were unexpected and that's what you
6 record in an area inspection.

7 MR. FREIDIN: If I could just have one
8 moment, please, Madam Chair.

9 Q. Can you describe the program or the
10 details of a program by which this effectiveness
11 monitoring would be done?

12 MR. BAX: A. One of the areas, as
13 indicated in this term and condition, is through the
14 area inspection program and other means where
15 appropriate.

16 Just on a practical sense, when we go to
17 look at what we did in the books, we monitor more than
18 just for compliance. We have to. Did the silviculture
19 treatment that we did, was it effective?

20 I'm sure the area inspection reports
21 report more on than just compliance. Yes, they planted
22 trees, but if those trees all die, obviously, you know,
23 you are going to report that it was a poor effect.

24 Q. Mr. Neary, I guess the problem I am
25 having is dealing with a guideline that you support

1 very highly and that is the Fish Habitat Guidelines.

2 I understood that you are saying that
3 that guideline is conservative, that you think it
4 works, it protects the aquatic environment, but, you
5 know, we are not just relying on that all the time and
6 what we are going to do is we are going to have a
7 provincial effectiveness monitoring program and that
8 that's where we are going to learn more about the
9 cause/effect linkages; isn't that true?

10 MR. NEARY: A. The monitoring I'm
11 referring to is outlined in term and condition 64(b)
12 which says:

13 "When monitoring timber management
14 activities MNR shall record any
15 undesirable conditions which are observed
16 in the area of the operations and which
17 appear to be related to timber management
18 activities."

19 Q. Okay.

20 A. Now, recording them is one thing.
21 Making some kind of an assessment on whether or not the
22 application of various guidelines is effective in
23 achieving its desired result is another.

24 Q. Okay, but --

25 A. This is not -- it does not envisage a

1 program that is specifically mounted to assess
2 effectiveness. It's what do you do with the record of
3 undesirable conditions.

4 Q. Okay. Let's go to the Ministry's
5 terms and conditions, page 58, please.

6 MADAM CHAIR: Term and condition 58?

7 MR. FREIDIN: No, page 58. It is
8 Appendix 8. It's page 58.

9 Q. Now, that's the Appendix 8, Report of
10 Past Forest Operations, and let's read together what
11 the Ministry is proposing to do if in fact -- or when
12 you have these undesirable observed conditions which
13 you say is what you want to be monitoring. It says:

14 "In the RPFO..." Report of Past Forest
15 Operations,

16 "1(k) will include a discussion of
17 significant problems and issues arising
18 during implementation of the timber
19 management plan for the previous five-
20 year term. This discussion will include
21 a description of any undesirable
22 conditions which have been observed in
23 the areas of operation for the previous
24 five-year term related to timber
25 management activities."

1 Then it goes on and says:

2 "(1) the Report of Past Forest Operations
3 will contain recommendations for the
4 development of the timber management
5 strategy for the next five-year term to
6 address problems and issues identified in
7 the Report of Past Forest Operations."

8 It seem to me that that really captures
9 the essence of what you would want in terms of
10 monitoring, seeing the observation, and reacting to it
11 in a reasonable systematic fashion. Could you comment?

12 A. Yes, just that it doesn't call for an
13 assessment of the effectiveness of the guidelines.

14 Q. Well, what more would you want to see
15 if it is a problem and issue -- and I am using the Fish
16 Habitat Guidelines as --

17 A. You aren't linking it back to whether
18 or not the guidelines are doing a good job.

19 What you are saying is you are observing
20 undesirable conditions, you are discussing strategies
21 to address the problems and you aren't explicitly
22 evaluating the effectiveness.

23 Q. But you are also, are you not, in
24 that situation assuming when you look at an undesirable
25 - condition, when you observe an undesirable condition,

1 and you weren't there when it actually happened you are
2 obviously making an assumption? You have got to make
3 an assumption that it was caused by something, right?
4 You don't know for sure, correct?

5 A. (nodding affirmatively)

6 Q. Assuming maybe timber management,
7 correct?

8 A. (nodding affirmatively)

9 Q. It might have been something else
10 that caused it?

11 A. Yes.

12 Q. So you don't really know -- you have
13 observed the condition, but you are really not in a
14 very good position to say whether your operations were
15 effective in preventing the undesirable observed
16 conditions because you just agreed with me that you
17 wouldn't know whether the conditions that you are
18 observing was caused by timber management or something
19 else?

20 A. Not on an individual basis, but
21 presumably if you organize and interpret this data you
22 can draw some pretty reasonable conclusions.

23 Q. Exactly. In fact, isn't the system
24 to in fact do that contained in Appendix No. 8 where at
25 the five-year level all of these undesirable conditions

1 will be observed and be recorded, and wouldn't you
2 agree that if what you saw was undesirable -- and this
3 would be coming out of the Report of Past Forest
4 operations which basically says here is the data I
5 went, it provided some detail about the physical nature
6 of the site.

7 If you did that and then you saw in your
8 five-year report that it seemed like 20 times this
9 condition was there and we had an undesirable condition
10 observed, you would say: Gee, maybe there is a trend
11 here, maybe we better take a good look and see whether
12 our operations -- you may get some idea whether it is
13 the operations and maybe then mount a research project.
14 Is that a reasonable approach?

15 A. I'm not too sure what you're
16 suggesting. Are you going to modify your terms and
17 conditions to explicitly call for effectiveness? Then
18 it meets what we're asking for.

19 Q. I think the problem is that
20 something --

21 A. If what you are saying is that you're
22 doing this kind of effectiveness assessment, then you
23 should have no problem with our modification of term
24 and condition 64.

25 Q. Putting it another way. I think it

1 would be clearer in terms of -- and for certain the
2 people in the field, the industry that are going to be
3 implementing this if they just said: Here is what you
4 have to do and they do it.

5 If it is the same thing, drop the word
6 effectiveness which conjures up different things in
7 different people's minds. If it doesn't really make a
8 difference, and you agree that the word effectiveness
9 is confusing - it is certainly confusing given rise to
10 this question -- why don't we just drop it and just say
11 do what we have got in the RPFO?

12 A. Well, I don't see where you're having
13 the difficulty, Mr. Freidin. If what you are saying is
14 what you are doing is effectiveness, then you should
15 have no problem with our term and condition.

16 Q. I'm not saying that it is
17 effectiveness monitoring.

18 A. I don't know what else you are going
19 to get from me.

20 MR. BAX: A. I think at the outset,
21 Madam Chair, Mr. Martel, again I think the general
22 thrust of my evidence was we would like to know what
23 they plan to do, where they did it and whether or not
24 it was effective.

25 I would submit and I believe the Ministry

1 of Environment also that we have to know more than
2 just, yes, we planted so many trees or we did this
3 according to what we said we were going to do.

4 We have to know from their monitoring,
5 you know, was the program working, what was the
6 effective of it and was it effective. I think it's
7 that simple. We were surprised that they just asked
8 for compliance.

9 MADAM CHAIR: The Board got confused just
10 a moment ago when Mr. Neary started talking about
11 effectiveness of the guidelines because that has a
12 separate focus in term and condition No. 66 and the
13 long-term studies of the fish. You're not talking
14 about that?

15 MR. NEARY: We are not talking about
16 that.

17 MADAM CHAIR: You are talking about
18 silvicultural effectiveness only?

19 MR. FREIDIN: No, he said
20 non-silvicultural effectiveness. That's the problem.

21 MADAM CHAIR: We are confused. The Board
22 has in its mind that we have got two quite separate
23 issue here.

24 When we think of guidelines effectiveness
25 we think about the long-term studies for the moose and

1 fisheries and habitat and tourism guidelines. When we
2 think about 64(a) we think in a linear way about
3 silvicultural effectiveness only.

4 MR. NEARY: What we're saying is that you
5 have people out there, their primary job is to monitor
6 what's going on.

7 If they are accumulating information as
8 it is outlined on adverse effects, that information can
9 somehow be organized and interpreted to make some kind
10 of comment on the effectiveness of applying it to the
11 guidelines.

12 Whether or not it is somebody driving
13 past an eagle's nest 10 times over a 10-year period and
14 noticing that there isn't an eagle there anymore, you
15 may not be able to define on a cause/effect basis, but
16 if you accumulate that information over a wide enough
17 area and over a long enough period of time you may be
18 able to draw some inferences.

19 MADAM CHAIR: And you don't believe that
20 that's what MNR is proposing to do in 64(b)?

21 MR. NEARY: What they appear to be
22 suggesting in 64(b) is that they record these things.
23 What our modification of 64(a) is say don't only record
24 them, try --

25 -- MADAM CHAIR: Do something with it.

1 MR. NEARY: Yes, do something with it.

2 MADAM CHAIR: Isn't that what it is in
3 Appendix 8, items 1(k) and (l)? They are talking about
4 something doing.

5 MR. NEARY: All we are asking for them to
6 do is to -- and Mr. Freidin assures me that it amounts
7 to effectiveness, so I don't understand why he has got
8 a problem.

9 MR. FREIDIN: Q. I didn't say it was
10 effectiveness. First of all, can we agree that (k) and
11 (l) in fact is the system -- is what you would want to
12 be done with the records, the individual records of the
13 observations of undesirable conditions, exactly what we
14 have got in (k) and (l) as a starter.

15 You would want us to do that, right?

16 MR. NEARY: A. We don't believe they
17 call for an assessment of effectiveness.

18 MR. BAX: A. Can I use a simple example.
19 Like, going back to the Hearst Forest, if the forester
20 travelling out in and did an area inspection over the
21 past few years and happened to run into this fisherman
22 and they had used some alternative methods and in one
23 area of the forest or the river he noticed a drop --
24 if it was that black and white - the other area, the
25 fishing is still good, he reports that to the area

1 forester and in his area inspection report he records a
2 negative or a positive effect from those activities.

3 That's what we're saying, you've got to
4 comply and report more than compliance in your area
5 inspection reports and your monitoring program. There
6 is good and bad and that's how we learn. That's how we
7 learn the effects of some of the activities.

8 I think to go out and just say: Yes,
9 they planted a number of trees, they did. We need more
10 than that

11 Q. We will have to deal with this in
12 another way.

13 Mr. Neary, just to finish this off, you
14 refer to term and condition 77, page 24. This is term
15 and condition 77 of the Ministry's draft, Exhibit 2032.

16 MR. NEARY: A. Which part?

17 Q. Well, implementation manuals, it
18 talks about revising them, and to try to shorten this
19 up, that when you review these manuals MNR is agreeing
20 to review each implementation manual and to consider
21 making changes to it depending on a number of factors.
22 If we look on page 25 on (c)(2) --

23 MADAM CHAIR: Where are we, Mr. Freidin?

24 MR. FREIDIN: MNR term and condition 77
25 on page 24.

1 MR. NEARY: Yes.

2 MR. FREIDIN: Q. I am saying this is the
3 next link, is what I am suggesting, Mr. Neary.

4 The Ministry they will observe the
5 conditions, they will report all those conditions in
6 the RPFO, they will discuss strategies and issues to
7 deal with that and as part of all that linkage the
8 Ministry has gone another step further and said we are
9 going revise implementation manuals on a regular basis
10 and one of the factors we will consider when we do that
11 is--

12 MR. NEARY: A. Results of the monitoring
13 program.

14 Q. --and if you look 77(c)(2), results
15 of the monitoring program described in condition 45.

16 So the Ministry has said in effect they
17 are going to -- the Ministry said we are going to
18 record the adverse observations, we are going to list
19 them all in the RPFO report, we are going to say was
20 that a problem and issue and what should we do about
21 it, and one of the things they do say is scientific
22 research, one may be that maybe we have enough
23 information here and we are going to revise the
24 implementation manual to avoid it.

25 It seems to me that all the pieces are

1 here.

2 A. Then what's the problem with
3 assessing effectiveness?

4 Q. Let's forget about what we call it.
5 If we have got all ingredients -- we don't agree that
6 that's effectiveness monitoring. We have a concern
7 about that.

8 If you agree that's what you want, then I
9 am saying just drop the name so that you get what you
10 want we get what we want?

11 A. I'm not in a position to unilaterally
12 drop that name.

13 Q. I would ask you to consider it and I
14 think I will move on to the next area of questioning.

15 MADAM CHAIR: Ms. Seaborn, I am working
16 off your term and conditions. We have our copy here
17 now. (handed)

18 MS. SEABORN: Thank you.

19 MADAM CHAIR: Thank you.

20 MR. FREIDIN: Q. By the way, Mr. Neary,
21 I told you during the break I wasn't going to ask you
22 any questions.

23 Am I correct that the agreement in term
24 and condition No. 32(a) and (b), the one that's
25 reflected in Exhibit 2214, the one to map site types.

1 It is one little piece of paper. I'm not too sure
2 whether you have to look at it, Madam Chair.

3 MADAM CHAIR: 2213?

4 MR. FREIDIN: 2214.

5 MADAM CHAIR: Here it is.

6 MR. FREIDIN: Q. That's the agreement
7 between the two ministries that there will be a number
8 of things done including the mapping of site types,
9 correct?

10 MR. BAX: A. That's correct.

11 Q. Am I correct that that agreement or
12 the mapping of site types will not require the use of
13 bar charts?

14 A. No, that's correct.

15 Q. All right.

16 MS. SEABORN: I think that was your term
17 and condition, Mr. Freidin.

18 MR. FREIDIN: I know but there was a lot
19 of time spent slinging bar charts and I thought the
20 Board would be left with the impression that you still
21 wanted them, but thank you, you confirmed that you
22 don't. Thank you.

23 MS. SEABORN: That was for the benefit of
24 Mr. Cassidy.

25 MR. FREIDIN: Q. Mr. Neary, on the

1 overhead -- which overhead was that that we talked
2 about?

3 MR. NEARY: A. This is I believe
4 overhead 11.

5 Q. All I wanted to confirm and I just
6 wanted to make sure the area of yellow -- the bounded
7 area of yellow and green on the right-hand side of the
8 slide--

9 A. Yes.

10 Q. --would you agree with me that that
11 area is mostly within the Great Lakes/St. Lawrence
12 Forest region?

13 A. This portion?

14 Q. Yes.

15 A. Yes, it is.

16 Q. Okay. You can turn it off. Would
17 you agree with me that the primary logging method in
18 that area is selection cutting?

19 A. Certainly in this portion it is
20 primarily selection cutting. There is quite a bit of
21 clearcutting through here. (indicating)

22 Q. Thank you.

23 A. Can I put this away now, Mr. Freidin?

24 Q. Yes.

25 A. That was it?

1 Q. That was it. Mr. Neary, I apologize,
2 I have just a couple more questions for-you.

3 Water crossings is the subject matter.
4 In your witness statement you refer to term and
5 condition 43(d) at page 25 which would be Tab No. 1,
6 page 25.

7 A. Yes.

8 Q. Actually, 43(d) on page 25 is the
9 Ministry's version of 43(d); is that correct?

10 A. Yes. I'm just realizing that we have
11 a numbering problem in here.

12 Q. I probably should have used the term
13 and conditions themselves. Go to page 29.

14 A. Page 29?

15 Q. 29. Would you agree that the
16 Ministry of Natural Resources' 43(d) and MOE's 43(d)
17 are identical except that you have added the word
18 tertiary?

19 So that the obligation set out in that
20 term and condition apply not only to water crossings
21 which -- crossings by primary and secondary roads, but
22 where primary and secondary roads cross waterbodies now
23 applies to where tertiary roads cross certain
24 waterbodies; is that correct?

25 A. Yes. I'm reading the two and that's

1 the only difference I can see.

2 Q. Okay. Then I take it that the intent
3 of the MOE 43(d) is to have the same considerations,
4 have the same factors considered regarding the removal
5 of water crossings by tertiary roads as you would have
6 for water crossings of the same waterbody by a primary
7 or secondary road?

8 A. Yes. I believe I made it clear that
9 the MOE position was that the impact of a washout was
10 dependent on the nature of the waterbody not on the
11 stand.

12 Q. All right. So the intent that I
13 described -- I accurately described your intent?

14 A. Yes.

15 Q. If that was made explicit, but I said
16 that my client might want to put in a different term or
17 condition, just put it under a different heading, do I
18 take it that as long as the requirement is explicitly
19 made that you won't get hung up on where it appears in
20 the term and condition so long as it is there and it is
21 clear?

22 A. Well, that sounds like you are
23 getting me to agree to something open-ended.

24 The organization of the terms and
25 conditions is not of particular interest to me, Mr.

1 Freidin. It's the intent that we're after.

2 Q. Good. Would you also then agree --
3 would you agree that when criteria or factors are
4 developed for primary water crossings, whether you
5 remove them or not, that when those criteria or factors
6 are developed for primary or secondary water crossings
7 you would want them to to apply to crossings of the
8 same waterbodies by tertiary roads? That's your
9 intent?

10 A. Crossing of the same waterbody by
11 tertiary roads? Can you clarify that what means?

12 Q. As I understand it, the water
13 crossing --

14 A. If you have a stream, the criteria
15 which we would see would apply regardless of whether
16 the road use was primary, secondary or tertiary.

17 Q. That's fine. This one may be for
18 you, Ms. Dahl. Term and condition 40(b). It is in the
19 terms and conditions. Would you look at your terms and
20 conditions, Exhibit 2202.

21 MR. MARTEL: What page?

22 MS. DAHL: 5.

23 MR. FREIDIN: Q. Would you also have
24 open as well the Ministry of Natural Resources' term
25 and condition 40 which you will find at page 13 of the

1 Ministry of Natural Resources' terms and conditions,
2 Exhibit 2032. Okay?

3 MS. DAHL: A. Yes.

4 Q. There was some discussion between you
5 and Madam Chair about whether MOE was taking a position
6 on whether roads should be open or closed and it was
7 during that discussion that gave rise to the following
8 questions.

9 Firstly, would you agree that use
10 management strategies consider the need for whether
11 roads be closed or there be restrictions on road use?

12 MS. DAHL: A. That's my understanding,
13 yes.

14 Q. Would you look at MNR 40(a)(3). It
15 indicates:

16 "For each corridor identified in
17 accordance with conditions 39(b) there
18 shall be an evaluation of the following
19 parameters which shall be documented.."

20 and it says,

21 "...consideration of reasonable use
22 management strategies, factors to be
23 considered include public access
24 provisions or restrictions and the
25 maintenance provisions and, where

1 appropriate, abandonment provisions."

2 Your term and condition has this
3 requirement that the alternatives must include at least
4 one are corridor that would not restrict access to the
5 general public once the road is in issue -- pardon me,
6 is in use.

7 I just want to know, what is lacking in
8 the Ministry's term and condition 40(a)(3) which has
9 caused you to suggest the addition in your 40(b)?

10 A. I think as I explained yesterday, the
11 intention in 40(b) is that it would be a separate
12 corridor which would not restrict -- which would not
13 require a restriction of public access.

14 Q. What's the purpose of doing that?

15 A. Well, public access is obviously a
16 controversial issue. The ministry is just concerned
17 that where you're looking at a corridor that may
18 require restriction of access and that option is being
19 discussed that if there is another reasonable corridor
20 which wouldn't require the consideration of possibly
21 restricting access that it would make sense to also
22 consider that corridor.

23 Q. What if there wasn't another
24 reasonable corridor on which you could clearly say that
25 there would be no restrictions?

1 A. Well, if there wasn't a reasonable
2 corridor, then I guess you couldn't do that. You can't
3 invent a corridor. If it doesn't exist it's not
4 reasonable to consider then.

5 Q. All right. So then your term and
6 condition which says the alternatives must include at
7 least one corridor, to reflect what you have said it
8 shouldn't be worded in a mandatory fashion then, would
9 you agree?

10 A. I think it must include an
11 alternative corridor where a reasonable one exists.

12 If you go back in your terms and
13 conditions, I believe it's 39 (b) when it talks about
14 identifying the alternatives, it says there that it is
15 a reasonable range of practical alternatives. The
16 intention here is not take away from the alternatives
17 be reasonable and practical.

18 Q. All right, thank you. Now, we have
19 got 55 minutes, Ms. Dahl.

20 You sit back now, Mr. Bax. I am finished
21 with you.

22 There was a discussion between you and
23 Mr. Cassidy regarding the number of bump-up requests
24 which have been received in relation to timber
25 management since 1988, correct?

1 A. Yes.

2 Q. I guess they would be more properly
3 described as designation requests?

4- A. Yes, technically speaking they are
5 designation requests.

6 Q. Because there is no Class EA approved
7 yet?

8 A. That's correct.

9 Q. Pardon me, no class of undertaking
10 approved yet?

11 A. Or a Class EA.

12 Q. Well, I believe the Board approves
13 classes of undertakings, not Class EAs, but we will
14 deal with that sometime later.

15 At the time of the designation request it
16 is fair to say that there was no decision by this Board
17 in place?

18 A. That's right.

19 Q. And, in fact, the full timber
20 management planning process which is recommended by the
21 Ministry of Natural Resources was not in place?

22 A. Not the most recent terms and
23 conditions, no.

24 Q. One of the provisions that was not in
25 place at the time that those designation requests were

1 made were local citizens' committees?

2 A. No, the provision wasn't in place,
3 although I understand that more recently there have
4 been some committees beginning to be established.

5 Q. But they certainly weren't
6 established for all the designation requests?

7 A. No, not for them all of them.

8 Q. I understand, Ms. Dahl, that you and
9 the Ministry of the Environment hold local citizens'
10 committees in fairly high regard, and I assume that
11 because you in fact endorsed the terms and conditions
12 implementing those kinds of committees for timber
13 management in the area of the undertaking?

14 A. Yes, we support local citizens'
15 committees.

16 Q. Can you just give me a little idea,
17 very briefly, why you believe that local citizens'
18 committees are, I guess, adviseable and effective?

19 A. The local citizens' committee can
20 provide a better link between the planning team and the
21 public; in other words, the public through a local
22 citizens' committee can get more involved in the
23 planning process that's going on.

24 Q. And in terms of one of the concerns I
25 understood you have generally is conflict resolution

1 and you believe that they play a useful role in that
2 regard?

3 A. They should be able to, yes.

4 Q. Am I correct that even in the
5 Ministry's, I guess, interim guidelines regarding
6 bump-up requests, that the Ministry -- sorry, it's not
7 there. Tab No. 10, Guidelines and Policy on
8 Presubmission Consultation for the EA process.

9 A. Yes.

10 Q. I understand that in terms of
11 consultation methods, if we turn to page 18, Tab No.
12 10, page 18, there is a figure No. 1 and it is entitled
13 Consultation Methods?

14 A. Yes.

15 Q. Under the very first method, public
16 advisory committee/working group, I see that a high
17 rating has in fact been given for those particular
18 entities right across the board in relation to all the
19 subject matters listed at the top, right?

20 A. Yes.

21 Q. It is just another indication of
22 the...

23 A. Values.

24 Q. ...the valuableness or the usefulness
25 that your ministry sees public advisory committees

1 playing, correct?

2 A. Yes.

3 Q. Thank you. Now, Ms. Dahl, in your
4 interrogatory responses and one in particular you
5 indicated that it is important that the timber
6 management planning process must be reasonable in terms
7 of time and costs. If you want the actual reference
8 it's --

9 A. Yes, I recall it.

10 MR. FREIDIN: For the Board's reference,
11 if you want to see that, it is OFAH 20.

12 Q. Now, would you agree with me, Ms.
13 Dahl, that somebody who is familiar with the actual
14 undertaking, someone who knows in a detailed way how it
15 is carried out, the complexities of the subject matters
16 with which it is dealing, the amount of time and effort
17 required to in fact prepare plans, go through public
18 consultation and document it, and the difficulties
19 which are encountered throughout an entire planning
20 process that that person would be in a better position
21 to determine whether a proposal was reasonable in terms
22 of time and cost than someone who did not have that
23 experience?

24 A. If I understand the question
25 correctly then, yes, they would have a more accurate

1 understanding of what's reasonable in terms of time and
2 cost.

3 Q. Right. I want to make sure you do
4 understand the question

5 I am just saying somebody who works in
6 timber management, prepares plans, knows all the
7 complexities of the operations and what's involved in
8 the planning and documenting and looking up all the
9 scientific information they need to make decisions they
10 are in a better position than someone who doesn't do
11 that and has very little knowledge about?

12 That person who does that on a regular
13 basis is in a much better position to say: Gee, that
14 proposal is going to be really timely or costly than
15 the person who doesn't have the same level of
16 experience?

17 A. Yes. I would think so from their
18 perspective, yes.

19 Q. Well, from your perspective too,
20 surely. I mean, if there was an undertaking in
21 relation to some medical matter and I don't know
22 anything about medical matters and there was a doctor
23 who said: Gee, that is impractical having regard to
24 time and cost, I would say: Well, I don't know
25 anything about that, if you say so I guess I have to

1 accept what you say. So.

2 The same things goes with timber
3 management, somebody who doesn't know very much about
4 timber management and somebody who does, right?

5 A. Yes.

6 Q. Thank you. Now, let's deal with
7 these maps you have up here on the wall. The map that
8 we have on the top is Exhibit 2216A and that I
9 understand is the eligibility map for the Brightsand
10 Forest; is that correct?

11 A. Yes.

12 Q. And the way the timber management
13 planning process works at the present time, could you
14 confirm for me, is that a number of eligibility
15 criteria are identified and applying those eligibility
16 criteria, all the areas in the management unit which
17 meet those criteria are identified on a map like 2216A?

18 A. That's my understanding of how it
19 works, yes.

20 Q. And that eligibility map are areas
21 which are eligible - let's assume we are just talking
22 about harvest for the moment - are the areas which are
23 eligible for harvest over the 20-year period of a plan,
24 correct?

25 A. Yes.

1 Q. Am I also correct that that is done
2 for each working group or forest unit in the management
3 unit?

4 A. I don't know that.

5 Q. You don't know. What is your
6 understanding of the relationship between the
7 calculation of MAD -- pardon me, the calculation of
8 working groups and areas shown on the eligibility map,
9 if any?

10 A. I don't have a specific understanding
11 of that.

12 Q. Okay. My understanding, can you
13 confirm if I am right, that for the five-year term of
14 the plan another set of criteria are identified and
15 they are called selection criteria, correct?

16 A. Yes.

17 Q. And through the use of those
18 selection criteria areas are identified within the
19 areas eligible which meet the selection criteria,
20 correct?

21 A. Yes.

22 Q. And the maps which are prepared in
23 accordance with the timber management plan, planning
24 manual, when they are showing the results of that
25 selection criteria will identify locations on the map;

1 in other words, the areas which in fact meet those
2 selection criteria?

3 A. It is my understanding that it
4 doesn't necessarily show all of those areas. It shows
5 the areas that are selected for operations on that map.

6 Q. Okay. And it shows the areas which
7 are selected for harvest for each working group or
8 forest unit which are being managed on that unit; is
9 that correct?

10 A. It may be. I'm not certain.

11 Q. What is your understanding, if any,
12 Ms. Dahl, as to the relationship between working groups
13 and forest units being managed on the forest management
14 unit and the areas depicted on selection maps,
15 allocation maps, at the five-year level?

16 A. I believe the areas selected are
17 shown by working group.

18 Q. Am I correct that the areas which are
19 actually identified on the selection maps, let's stick
20 to harvest for the moment, by working group that the
21 amount of area shown in each working group or forest
22 unit would be the area equal to the maximum allowable
23 depletion for that working group for the five-year
24 term?

25 A. I'm not certain of that.

1 Q. Then what understanding, if any, do
2 you have, Ms. Dahl, regarding the relationship between
3 maximum allowable depletion area for a working group
4 and what gets shown on the allocation maps?

5 A. I'm not certain what the exact
6 relationship is.

7 Q. Do you have any understanding?

8 A. Just that the maximum allowable
9 depletion tells you the maximum amount that you can
10 deplete of that type of working group for the five-year
11 period.

12 Q. All right. But you don't know
13 whether that is what is shown on the map or not,
14 whether there is any relationship?

15 A. I assume there is probably a
16 relationship, but I can't say for sure.

17 Q. If I suggest to you that there is a
18 relationship and what gets shown for each working group
19 is the area equal to the MAD you are not in a position
20 to disagree with me?

21 A. No.

22 Q. Now, there is also an area which is
23 shown on maps prepared for the five-year term of the
24 plan. They are called contingency areas; is that
25 correct?

1 A. Yes.

2 Q. Are those areas shown on the
3 allocation maps for the five-year term?

4 A. It is my understanding that they
5 would be.

6 Q. Okay. Now, we have another map here,
7 2216C and this I think you described as a summary map?

8 A. It's similar to my understanding of
9 what a summary map would look like.

10 Q. This is the actual summary map which
11 was prepared for the Brightsand Forest; is that
12 correct?

13 A. It is called the depletion allocation
14 map. I'm not certain if that is the same thing as what
15 a summary map would be.

16 Q. Let's proceed on the assumption that
17 that is a summary map. Let's proceed on that
18 assumption.

19 This area shown on the summary map,
20 Exhibit 2216C, is in fact the areas which were shown on
21 the allocation map, Exhibit 2216B; isn't that correct?

22 A. Yes.

23 Q. So they have taken the stands which
24 were actually selected on this allocation map, 2216B,
25 which is at a scale of 1:63,360 and they transferred it

1 to a map of a much smaller scale, 1:250,000, and
2 prepared the summary map; is that correct?

3 A. Yes.

4 Q. Now, right next to the summary map we
5 have another map and the map that we have here is
6 Exhibit 2212A. Am I correct that this a -- it is
7 entitled Five Year Forest Activities Map for the Red
8 Lake Crown Management Unit?

9 A. Yes.

10 Q. And on this map it has a number of
11 areas coloured in, correct?

12 A. Yes.

13 Q. And what are those areas?

14 A. I believe those are the allocations
15 for the five-year period.

16 Q. These are areas which have been
17 allocates for harvest?

18 MR. BAX: A. These are areas for
19 harvest, renewal and maintenance, Mr. Freidin. It is
20 my map.

21 Q. Thank you. Now, if in fact there was
22 a summary map for the Red Lake Crown unit based on
23 Exhibit 2212, you would take these sort of widely
24 separated blocks and transfer them to a map of a
25 smaller scale similar to 2216C, correct.

1 MS. DAHL: A. Yes.

2 Q. Now, I just notice a little bit of a
3 difference between the allocation map for Red Lake and
4 the allocation map for the Brightsands and that is on
5 the Red Lake plan the blocks which have been allocated
6 seem to be more distant from each, more separated in
7 nature than the allocation map than we have here
8 Exhibit 2216B here for the Brightsand. Is that a fair
9 observation?

10 MR. BAX: A. Well, yes, it's a total
11 different scale. I mean, 1:63,000, that is one inch to
12 inch and this is four inches to one. So there is an
13 enormous difference.

14 Q. So we can't really compare how close
15 these stands are to each or these blocks are compared
16 to the Brightsand one then without having the same
17 scale?

18 A. Not to same level of accuracy, no.
19 You can do the same here, but again to a much lesser
20 degree.

21 Q. I may come back to that. Let me just
22 leave that for a moment.

23 You have a term and condition in relation
24 to allocation areas. Go to MOE terms and conditions,
25 Appendix No. 4, or if you want to turn to your witness

1 statement and tell us where it is.

2 MS. DAHL: A. Well, it is in the MOE
3 terms and conditions on page 13. It's also in the
4 witness statement.

5 Q. Page 10?

6 A. Yes, page 10 of the witness
7 statement.

8 Q. All right. Now, the main addition
9 that you have made here is to 2(a)(6)--

10 A. Yes.

11 Q. --where at the first information
12 centre certain information should be available and this
13 is where you are saying - and you discussed it with Mr.
14 Cassidy at length - you want the brief description of
15 the advantages and disadvantages of options considered
16 for allocation for operations and at the discretion of
17 the plan author a description of the preferred option.

18 Now, I indicated during a short exchange
19 that I was still confused as to exactly what the
20 Ministry of the Environment meant by allocation for
21 operations?

22 A. I think I clarified yesterday that
23 it's the decision on where the harvest operations will
24 be for the five-year period.

25 Now, I understand that that's presented

1 as a package so that would, I guess, also include your
2 preferred renewal and maintenance. It is part of the
3 package.

4 The decision that we are concerned about
5 is when you go from eligibility for 20 years to the
6 areas selected for 5 years.

7 Q. For harvest?

8 A. For harvest.

9 Q. So at the five-year level there are
10 separate maps usually, quite frequently -- whether it
11 is a separate plan or one map there are areas which are
12 selected for harvest, there are areas which are
13 selected for renewal and there are areas which are
14 selected and identified for tending.

15 So I take it then that the purpose of
16 your amendment in 2(a)(6) of Appendix 4 is directed
17 only to those areas which, in fact, are selected for
18 harvest?

19 A. Yes.

20 Q. Okay. Now, you want to add
21 something, as I understand it, to the selection mapping
22 in relation to -- I think you call them optional area;
23 is that correct?

24 A. To the summary map, not the selection
25 map.

1 Q. All right. But I think we have
2 agreed that you can't add something -- well, we have
3 agreed that the summary plan is in fact the product of
4 the selection map.

5 You have just done all that allocation
6 and selected areas for harvest and it is only when you
7 have done that that you are able to transfer it to that
8 summary map which is at a much smaller scale; isn't
9 that correct?

10 A. I wouldn't say that it's dependent on
11 that.

12 Q. Well then, can you explain to me how
13 you would identify areas on the summary map, these
14 optional areas, if you haven't identified them on the
15 selection map first?

16 A. When the planning team is identifying
17 those optional areas they may use a map of that scale
18 to do that. I don't know, however they want to do
19 that.

20 All we are saying is when you go to the
21 information centre to transfer that information in a
22 general way on to that summary map which is the smaller
23 scale map.

24 Q. All right. So what I understand you
25 to say is that the planning team would have to go

1 through exactly the same exercise in relation to these
2 optional areas as they did for the areas which actually
3 showed up on the selection map before they would be
4 able to show the areas in a general way on a summary
5 map?

6 A. You would have to consider the
7 eligible areas and apply the selection criteria to
8 identify them, which I said yesterday.

9 Q. As I understood your evidence there
10 is no specific rule that you want to put in place as to
11 how much more you want to show by way of optional
12 harvest areas in any TMP; is that correct?

13 A. No, we're not specifying the amount.
14 We're saying what is there, what exists, what meets the
15 selection criteria.

16 It's my understanding that in a general
17 way these things have to be considered anyways to
18 determine where you are going to operate. We're simply
19 asking that the public be let it on that decision.

20 Q. So in terms of how much, as I
21 understand it, how much is going to be dictated by how
22 much area in addition to the area selected for the
23 particular working group and shown on the selection map
24 actually satisfies the selection criteria; is that
25 right?

1 MADAM CHAIR: Could you repeat that
2 question, Mr. Freidin.

3 MR. FREIDIN: Q. I take it then that the
4 amount of area which would be optional harvest areas
5 would then be dictated by -- would be the same as that
6 area over and above the areas selected for harvest
7 which met the same selection criteria which resulted in
8 what you see on the allocation map?

9 MS. DAHL: A. Yes, but I would add that
10 I don't think you'd have your selected areas yet at the
11 point that you are going through this exercise and the
12 planning team is going through this exercise.

13 The intention is not to have already
14 selected the areas. It's to look at what is eligible,
15 what meets the criteria and then determine which areas
16 you are selecting for your operations and to involve
17 the public in their process.

18 MADAM CHAIR: Excuse me. But my
19 understanding of -- you don't mean not selected areas,
20 you mean not preferred areas because the selected areas
21 are only -- not all of the areas meeting the selection
22 criteria in Exhibit 2016B will have operations on them.
23 That is the whole range of optional areas, right?

24 MS. DAHL: It's the areas selected for
25 operations.

1 MADAM CHAIR: Yes, but what actually
2 takes place in those areas defined by the selection
3 criteria aren't always operated on. That's your range
4 of optional areas to operate on?

5 MR. FREIDIN: No.

6 MS. DAHL: No.

7 MR. FREIDIN: Let's go through this
8 again. That's why I went through it fairly slow, Madam
9 Chair.

10 Q. What's shown on the five-year
11 allocation map --

12 MADAM CHAIR: Just call it B.

13 MR. FREIDIN: Q. On the allocation map
14 where you show the areas shown for this, in the case of
15 harvesting, that's an area which meets your selection
16 criteria and you show an area up to the maximum amount
17 you can harvest of that working group, that's correct?

18 Mr. Bax, that's correct?

19 MR. BAX: A. Pardon me?

20 Q. That's correct?

21 A. That's correct.

22 Q. There may very well indeed be,
23 depending on the forest, a lot more area in the 20-year
24 eligibility area which would meet the selection
25 criteria which resulted in this map; is that right, Mr.

1 Bax?

2 A. That's correct, Mr. Freidin.

3 Q. But you can only show, according to
4 the timber management planning process, you can only
5 operate on, you can own harvest an area equal to the
6 MAD for each working group?

7 A. That's right.

8 Q. So, therefore, even though there may
9 be more area than the MAD for a working group on the
10 ground at the time you are preparing your selection
11 map, you can only operate on the area equal to the MAD,
12 correct, at the present? Isn't that right?

13 A. I believe that's correct. I think
14 the point, though, is simply the selection criteria
15 determined by whatever, economics, age, there is other
16 options in there and they want to see those other
17 options on that scale to see why.

18 Q. Right, but I am just trying to
19 clarify for the Board at the moment.

20 So what you are saying, what I understand
21 you to be saying, Ms. Dahl, is that where you have a
22 situation where you take your selection criteria for a
23 working group and you say: I have got a hundred
24 hectares that meet the selection criteria for that
25- working group, and then you say: I look at the MAD and

1 the MAD said, gee, I can only harvest 50 in this
2 five-year term, you want a map, a selection map, as I
3 understand it, to show not just the 50 where you are
4 going to actually harvest in the five years, but you
5 want to map to show the whole hundred; isn't that
6 right?

7 MS. DAHL: A. Yes, your options would
8 consist of the whole hundred. You are then going to
9 make a decision on where you're going to take those 50
10 from, and that's the decision that we are saying the
11 public should have exposed to them at that first
12 information centre and have some input in.

13 Q. All right. So, as I understand it,
14 you are saying that somewhere there should be an
15 initial map that shows all the area which meets your
16 selection criteria?

17 A. We're not specifically proposing that
18 there be such a map. That may be the best way for the
19 planning team to determine those areas.

20 Q. But you have got to know where they
21 are geographically on the ground, otherwise you can't
22 provide your summary map which is going to show your
23 optional areas for harvest; isn't that right?

24 A. Then they may have to prepare a map
25 to define those options--

1 Q. All right.

2 A. --if that's the way that the planning
3 team has to determine where they are.

4 Q. This summary map, Exhibit 2216C, it
5 shows the areas -- in a summary way the areas which
6 were selected for harvest?

7 A. Yes.

8 Q. And if, in fact, there were more
9 areas than the areas selected for harvest which met the
10 selection criteria you would want more areas coloured
11 in on this map?

12 A. Yes, and identified as options.

13 Q. And the number of areas that you
14 would colour in on this map would depend on the amount
15 of area over and above the MAD for any working group
16 that met your selection criteria, correct?

17 A. Yes.

18 Q. The closer together those particular
19 stands or blocks were the closer they would look on
20 your summary map, correct?

21 A. Yes, they will be grouped into an
22 option.

23 Q. Right. The more separated those
24 particular boxes happen to be you might have a whole
25 bunch of options quite separated by some distance,

1 spread out across the entire summary map depending on
2 the forest structure that you encountered at any time
3 particular time; is that right?

4 A. Well, the planning team would have to
5 determine how they were going to define what the option
6 was. It would have to be obviously something
7 reasonable.

8 Q. Well, now you are getting into
9 another factor.

10 MR. MARTEL: Can I ask a question?

11 Are you attempting, without saying it, to
12 say that the public thus makes the decision or has an
13 input into the decision which is going to be reached as
14 opposed to if you had just had the MAD and said this is
15 the MAD and how you are going to do the planning around
16 it, but if you put the extra -- let's use the figure
17 500.

18 Your MAD is 500 hectares, there is a
19 1,000 hectares that is available and meets the
20 eligibility criteria, you want the public to make or be
21 involved in the decision of which of the 500 hectares
22 are going to be cut?

23 MR. BAX: Yes, it's that simple.

24 MS. DAHL: Yes.

25 MR. BAX: Most at the time at these open

1 houses you get I think a well-informed public and if
2 they get upset then at least you can show the reasons
3 why you didn't choose the second and third options
4 because you had to cross a river or it cost more,
5 whatever your eligibility criteria, the stand is too
6 young.

7 It's simply to show that there were other
8 options considered other than the ones just shown on
9 that map. It's that simple. So, again, the public can
10 be well informed.

11 MR. FREIDIN: I think I have gone through
12 it enough. I wanted to make sure that we all had a
13 sound understanding of the relationship between these
14 various maps.

15 Q. I think part of the next question
16 that I wanted to ask got answered, but let me put the
17 full question to you, in any event, Ms. Dahl.

18 Am I correct that the reason that you
19 want to show these optional areas is for the public to
20 have additional opportunity to say -- or to have say in
21 the choice of where the operations will occur in the
22 five years? Is that one reason?

23 MS. DAHL: A. Yes, that's one reason.

24 Q. Is it also another reason that you
25 want to do that in order to enable conflicts to be

1 avoided? You believe it will assist in enabling
2 conflicts to be avoided?

3 A. Yes.

4 Q. Do you put anymore emphasis on one of
5 those purposes than on the other?

6 A. I think they are inter-related.

7 Q. Inter-related in the sense that you
8 may have avoid a conflict if somebody says: Not in my
9 backyard and you can go over there and if there is no
10 one in that other backyard you may have avoided the
11 conflict?

12 A. You have situation now where a
13 decision is made the operations will occur here. If
14 someone is upset about that or concerned about that
15 they are not given any explanation of why the
16 operations are there. If they suggest an alternative
17 somewhere else it's not considered. It is already --
18 the areas are chosen.

19 What this does is allows those options to
20 be opened up so the public can comment on them and it
21 provides the rationale for why you chose the areas you
22 do. The public has some input in that and, therefore,
23 they have an understanding of the reasons why the
24 activities are scheduled for where they are, whether
25 that is cost or -- you know, whatever the reasons are,

1 they understand those.

2 Q. Okay. I am going to come back to
3 that, but I just sort of want to follow through this
4 sequence to make sure that we all understand what is
5 being proposed by the ministry.

6 Now, would you please turn to your
7 Appendix No. 4 of your draft terms and conditions.

8 A. Yes.

9 MR. FREIDIN: We are not going to finish
10 today. I don't whether you want to break or what you
11 want to do. I'm having fun actually. I like learning
12 things.

13 MADAM CHAIR: How much longer will you be
14 in cross-examination, Mr. Freidin?

15 MR. FREIDIN: I would think another maybe
16 hour and a little bit. Keep going?

17 MADAM CHAIR: We have to wait for a
18 witness.

19 Ms. Seaborn, how long will you be in
20 re-examination?

21 MS. SEABORN: Just five or ten minutes,
22 Madam Chair, at the moment. We will be very brief, but
23 given the Board's request about adjourning at 3:15 we
24 are clearly not going to finish by 3:15 if Mr. Freidin
25 has another hour.

1 MR. FREIDIN: I am wondering, if we are
2 coming back tomorrow, I am going to get into the next
3 little few steps in this thing and I don't think I am
4 going to get through the next step by 3:15.
5 This might be a good time to break.

6 MADAM CHAIR: Is this a good time to
7 break for the day and start again at 9:00 tomorrow
8 morning.

9 MR. FREIDIN: I think so.

10 MS. SEABORN: Madam Chair, I would just
11 like confirm with Mr. Neary. I haven't of course
12 spoken to him about timing. We were planning on
13 finishing today and I don't know what his travel plans
14 are.

15 Given Mr. Martel's reluctance to sit on
16 Fridays the last thing we had anticipated was that we
17 would be here tomorrow morning. We thought perhaps
18 Monday morning, but...

19 MR. MARTEL: We don't want to force them
20 to come back.

21 MS. SEABORN: I appreciate that and thank
22 you for that.

23 Mr. Bax, do you have a problem with being
24 here tomorrow morning for a short period?

25 MR. BAX: No, I don't.

1 MS. SEABORN: Thank you.

2 MR. FREIDIN: Madam Chair, I can't
3 imagine another question coming up for Mr. Neary and if
4 we want to take the remaining 15 minutes, as long as we
5 stick to subject matters that have been dealt with
6 today in my cross-examination, for you to ask him some
7 questions and get him out of here tonight and send him
8 that's fine by me.

9 MS. SEABORN: Mr. Neary should be here
10 for the remainder of the panel.

11 MR. FREIDIN: Okay.

12 MADAM CHAIR: All right. Why don't we
13 adjourn for the day and we will begin at nine o'clock
14 tomorrow morning and hopefully finish fairly quickly.

15 MR. MARTEL: You are going to be how
16 long, Mr. Freidin? I have to make some more air plans.
17 You just scuttled the last set that were made.

18 MR. FREIDIN: An hour and a half tops I
19 would think.

20 MR. MARTEL: For you?

21 MR. FREIDIN: Yes.

22 MS. SEABORN: Mr. Sutterfield is out of
23 shirts.

24 MR. MARTEL: They sell them.

25 MS. SEABORN: Mr. Neary, we were just

1 discussing coming back tomorrow morning. Do you have
2 any problem with being here? Have you made other
3 arrangements for tomorrow?

4 MR. NEARY: No.

5 MS. SEABORN: Thank you.

6 MADAM CHAIR: Thank you very much for
7 your co-operation and we will begin tomorrow morning at
8 nine o'clock.

9
10 ---Whereupon the hearing was adjourned at 3:00 p.m., to
11 be reconvened on Friday, May 1st, 1992 commencing at
12 9:00 .a.m.

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25 MC [C. copyright 1985].



